SEP 12

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 387

MARK GARNON,
Petitioner,

VERSUS

W. R. BRITTON,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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In the
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No. .....

MARK GANNON,
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W. R. BRITTON,
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

To the Honorable Supreme Court of the United States:

NOTE: Reference to the record, as used in this petition, (R. __) refers to the page of the typewritten record, certified by the Clerk of the Supreme Court of the State of Oklahoma, and filed herewith.

Your petitioner, Mark Gannon, most respectfully prays this Honorable Court that the writ of certiorari be granted to review the proceedings had and the final decision of the Supreme Court of the State of Oklahoma, in a certain case pending in that court, styled and numbered, "W. R. Britton, Plaintiff in Error, v. Mark Gannon, Defendant in Error, No. 36,249," wherein your petitioner was defendant in error, and the respondent was plaintiff in

error, and respecting such proceedings and final decisions, your petitioner respectfully represents and shows:

(a) REPORTS OF OPINION DELIVERED BELOW

It is sought hereby to obtain a review of the decision and judgment of the Supreme Court of the State of Oklahoma, rendered on the 3rd day of May, 1955, in said Case No. 36249 in said court, and the decision of such Supreme Court of Oklahoma, made on the 21st day of June, 1955, denying petitioner's petition for rehearing in that court (R. 254-A), which petition for rehearing had been filed within the time allowed by the rules of that court (R. 252). The opinion of the Supreme Court of Oklahoma in such case, was written by JUSTICE ARNOLD, and is reported in The Journal, published by the Oklahoma Bar Association, Volume 26, page 761, under date of May 7, 1955, and in 285 Pacific Reporter, 2nd, page 407 (advance sheets). Said opinion appears in the typewritten certified transcript of record filed herewith (R. 245), and is attached to this petition as part of the appendix, Exhibit 1. On July 11, 1955, the Supreme Court of Oklahoma made an order staying the enforcement of its mandate until October 1, 1955, pending the filing of a petition for writ of certiorari in the Supreme Court of the United States, and further providing that if said petition is filed before October 1, 1955, enforcement of the mandate shall be further stayed until such time as the Supreme Court of the United States renders its final decision herein, or until further order of said Court (R. 264).

(b) GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The opinion of the Supreme Court of the State of Oklahoma was rendered on May 3, 1955 (285 P.2d 407), and on May 10, 1955, upon the application of this petitioner (R. 250), said court made an order granting this petitioner until June 12, 1955, in which to file a petition for rehearing (R. 252), and on the 2nd day of June, 1955, this petitioner filed in the said Supreme Court of the State of Oklahoma, his petition for rehearing (R. 253). Said petition for rehearing was denied by said court on June 21, 1955 (R. 254-A). On July 11, 1955, the Supreme Court of Oklahoma made an order staying the enforcement of its mandate until October 1, 1955, pending the filing of petition for writ of certiorari by plaintiff in error, in the Supreme Court of the United States, and on July 11, 1955, said court made an order amending the said order, granting said stay pending the filing of petition for writ of certiorari by defendant in error, in the Supreme Court of the United States (R. 264).

The time within which a petition for writ of certiorari may be filed in this Court to review a judgment of the highest court of a state, is governed by Section 2101(c), U.S.C., which authorizes the filing of said petition within 90 days after the entry of such judgment or decree. This Court has held that the time for filing said petition for writ of certiorari in this Court is suspended by a petition for rehearing in the state courts, and the 90-day period begins to run from the day when the state court denies such petition for rehearing. *Gypsy Oil Company* v. *Escoe*, 275 U.S. 498, 72 L. Ed. 393, 48 Sup. Ct. 112.

The statutory provision believed by petitioner to confer on this Court jurisdiction to review the judgment or decree of the Supreme Court of the State of Oklahoma, by writ of certiorari, is found in Section 1257, of Title 28, U.S.C., the pertinent parts of which are as follows:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows: * * * (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commision held or authority exercised under, the United States."

(c) THE QUESTIONS PRESENTED FOR REVIEW

The question presented for review is whether or not the judgment rendered by the Circuit Court in and for Fayette County, Illinois, on the 29th day of September, 1951, in a case wherein Mark Gannon was plaintiff and W. R. Britton was defendant, is entitled to full faith and credit in a suit brought on said judgment in the courts of the State of Oklahoma, the said Illinois court having unquestioned jurisdiction of the subject-matter, and having obtained jurisdiction of the person of W. R. Britton, by personal service of summons on said W. R. Britton in said State of Illinois (R. 65), in which action, by the judgment of the said Circuit Court of Fayette County, Illinois, the plaintiff Mark Gannon obtained judgment against the said

W. R. Britton in the sum of $18,000.00. This and such subsidiary questions fairly comprised therein, are the only questions presented for review.

(d) THE CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The constitutional provision involved in this case is Section 1 of Article IV of the Constitution of the United States:

> "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

The Act of Congress implementing this constitutional provision is found in Title 28, U.S.C., Section 1738, and is as follows:

> "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> "The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

"Such acts, records, and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

(e) STATEMENT OF THE CASE

On the 29th day of September, 1951, the Circuit Court in and for Fayette County, State of Illinois, rendered a judgment against W. R. Britton, in favor of Mark Gannon, for the sum of $18,000.00, in a case therein pending, wherein Mark Gannon was plaintiff, and W. R. Britton was defendant (R. 10-15). A duly authenticated and certified copy of this judgment, together with record of certain other formal proceedings in that court, are shown at pages 4 to 15 of the typewritten record, and a copy of said decree, and the authentication thereof by the clerk and the judge of said court, omitting the other formal proceedings, are shown in the appendix to this petition as Exhibit 2. This record shows that various other parties were made defendants in said action in the Circuit Court of Fayette County, Illinois, but it was not claimed that any liability alleged against such other defendants was a joint liability with W. R. Britton. The action against the other defendants was eventually dismissed, and their connection with the case has no direct bearing on the questions here presented.

On February 21, 1952, the said Mark Gannon, as plaintiff, filed his petition against the defendant W. R. Britton, in the District Court of Pontotoc County, Okla-

homa (R. 3), setting up such Illinois judgment, and praying for a judgment in the said District Court of Pontotoc County, Oklahoma, against the said W. R. Britton, for the said sum of $18,000.00 with interest thereon. A duly authenticated copy of the Illinois judgment was attached to said petition as an exhibit. A copy of the said petition filed in the District Court of Pontotoc County, Oklahoma, omitting the exhibits thereto, is shown in the appendix hereto as Exhibit 3. The exhibit to said petition, i.e., the certified copy of the Illinois judgment, is shown in the appendix as Exhibit 2. Summons was issued and served on the said W. R. Britton (R. 17-18). Thereafter, the defendant W. R. Britton appeared by his attorneys in the District Court of Pontotoc County, Oklahoma, and filed a motion to quash and demurrer to said petition, both of which were overruled by the court (R. 19-23). Thereafter, said defendant W. R. Britton filed an answer in the District Court of Pontotoc County, Oklahoma, in said cause (R. 24-26), which answer is shown in the appendix hereto as Exhibit 4. Plaintiff filed a motion to require the defendant to make the said answer more definite and certain in certain respects, and thereafter, on December 29, 1952, the defendant W. R. Britton filed an amended answer and cross-petition answer (R. 28-34) which answer and cross-petition answer are shown in the appendix hereto as Exhibit 5. In said amended answer and cross-petition, the defendant sets out certain alleged transactions with one "Spike" Gannon, whom he alleges to be a brother of the plaintiff Mark Gannon, and alleges that the said "Spike" Gannon is the real party in interest, and the only party with whom he had any business transactions; that he made

the bill of sale to the interest in the drilling rig to Mark Gannon at the request of "Spike" Gannon, refers to Mark Gannon as the "sham plaintiff", and alleges that the said "Spike" Gannon made certain representations to him about the lawsuit in Fayette County, Illinois, which induced Britton to make no appearance in the said case in Fayette County, Illinois, and alleges that the Illinois judgment is therefore void and of no force and effect. In his cross-petition, he asks that the said "Spike" Gannon be made a party defendant, and sets out at length a claim for damages against the said "Spike" Gannon.

The plaintiff Mark Gannon promptly filed a motion to strike the said amended answer and cross-petition (R. 35-36), which said motion to strike is shown in the appendix hereto as Exhibit 6. Said motion to strike set up that the allegations of said amended answer and cross-petition are wholly irrelevant to the issues involved, did not constitute any defense to the original action of plaintiff, and further set up that the judgment of the Circuit Court of Fayette County, Illinois, *"has now become final, and is entitled to full faith and credit"* in the District Court of Pontotoc County, Oklahoma.

On February 4, 1953, the District Court of Pontotoc County, Oklahoma, made an order sustaining the said motion to strike all of the said answer and cross-petition, except the general denial contained therein (R. 37-38), and at request of counsel for defendant, gave the defendant five days in which to file a second amended answer. The said order sustaining the motion to strike is shown in the appendix hereto as Exhibit 7.

Thereafter, on February 14, 1953, the defendant W. R. Britton filed a second amended answer (R. 39-41), setting up a number of the same matters alleged in his answer and first amended answer. Said second amended answer is shown in the appendix hereto as Exhibit 8. Plaintiff filed a motion to strike all of said second amended answer, except the first three lines thereof, constituting a general denial (R. 42-43). Said motion to strike is shown in the appendix hereto as Exhibit 9. On March 4, 1953, the court made an order sustaining the said motion to strike (R. 44), to which the defendant excepted, and the said order sustaining the said motion is shown in the appendix hereto as Exhibit 10.

Under this condition of the pleadings, the case proceeded to trial before the Honorable John Boyce McKeel, Judge of the District Court in and for Pontotoc County, Oklahoma, on May 4, 1953. The record of the proceedings of the trial is shown in the typewritten record filed herewith, at pages 53 to 79, and a copy thereof appears in the appendix hereto, as Exhibit 11. Briefly summarizing the proceedings at said trial, plaintiff introduced in evidence as his Exhibit 1 (R. 55), the authenticated copy of the judgment rendered by the Circuit Court of Fayette County, Illinois, on the 29th day of September, 1951, which original authenticated copy was attached to plaintiff's petition as Exhibit A (R. 10-15), together with other parts of the record from the Circuit Court of Fayette County, Illinois (R. 4-9) (see appendix hereto, Exhibit 2). Plaintiff introduced at the trial as Exhibit 2 (R. 56), an authenticated copy of the original complaint in equity, filed in the Illinois court in said case. Said exhibit appears in full in the type-

written record filed herewith (R. 81-106), including the exhibit thereto, and the said complaint in equity, omitting the exhibits, is shown in the appendix hereto as Exhibit 12. Plaintiff also introduced at the trial as Exhibit 3 (R. 57), a duly authenticated copy of further proceedings in the Circuit Court of Fayette County, Illinois, including alias request for summons, Circuit Court summons and return thereof, showing service on W. R. Britton, affidavit as to military service, motion for leave to file amended complaint, affidavit of mailing copy of the notice thereof, the notice, and the amended complaint with exhibits thereto. The authenticated copy of this Exhibit 3 appears in full in the typewritten record filed herewith, pages 109 to 146, and, omitting the affidavit as to military service and Exhibit B to the amended complaint as not pertinent, is shown in the appendix hereto as Exhibit 13. Upon the introduction of the said three exhibits, the plaintiff rested his case (R. 57).

Thereupon, counsel for defendant produced as witness on behalf of the defendant, W. R. Britton (R. 58). The examination of this witness is shown in full in the typewritten record, at pages 58 to 71, and the same is shown in the appendix hereto as part of Exhibit 11. Most of the questions asked Mr. Britton were in regard to transactions prior to the bringing of the suit in Illinois, in regard to conversations with Mr. "Spike" Gannon, a brother of the plaintiff Mark Gannon, both before and after the suit was filed in Illinois, and as to the merits of the case involved in the Illinois suit. To all of such questions, counsel for the plaintiff Mark Gannon objected. In most instances, the

objection was in the following words: "We object to that, if the Court please, as an attempt to go behind the judgment and into the merits of the case." Most of these objections were sustained by the trial court, and counsel for the defendant would dictate into the record what he expected the witness to state in answer to the question. None of such tendered testimony disclosed any facts which would impeach the jurisdiction of the Illinois court over the subject-matter of the action or the person of the defendant, and none of said tendered testimony tended to show any fraud in obtaining the jurisdiction of said court over the person of the defendant W. R. Britton. To the contrary, referring to the Illinois case, Britton was asked by his attorney: "Were you served with summons in the suit above referred to?" To which Britton answered, "Yes" (R. 65).

Nowhere in the tendered testimony is it stated that any representations were made to the defendant W. R. Britton in regard to the Illinois suit by the plaintiff Mark Gannon, or at his instigation. All of such tendered testimony is to the effect that "Spike" Gannon, who is not a party to this action, made such representations as are claimed by the defendant. Defendant's counsel asked this witness, "Did you ever have any contact or make any contract with the plaintiff in this suit, Mark Gannon?" The objection to said question by counsel for plaintiff being sustained, the defendant's counsel stated in the record, "To which the defendant excepts, and states that he expects the answer to be that Mr. Britton never had any contact with or contract with or financial dealings with Mark Gannon, the plaintiff in this case" (R. 70).

The defendant then produced as a witness Margaret Carol Reagan Britton, and her testimony appears in full in the typewritten record filed herewith, at pages 72 to 76, and is shown in the appendix hereto attached, as part of Exhibit 11. This witness testified that she was the wife of the defendant W. R. Britton. The questions asked her were similar to the questions asked W. R. Britton, and the objections of counsel for the plaintiff were the same as the objections to the questions asked the witness W. R. Britton. Most of said objections were sustained by the court, and counsel for the defendant dictated into the record what he expected the answer of the witness to be, and none of those tendered answers tended to impeach the jurisdiction of the Circuit Court of Fayette County, Illinois, as to the subject-matter or of the person of the defendant W. R. Britton.

The defendant then introduced in evidence his Exhibit 1 (R. 76), which exhibit is shown in the typewritten record filed herewith, at pages 147 to 207. This exhibit is very largely a repetition of Exhibits 1, 2 and 3 of the plaintiff, and contains no matter which in any way throws any cloud on the jurisdiction of the Illinois court, and consequently, is not shown in the appendix hereto.

Thereupon, both parties announced that they closed their case (R. 78), and after argument of counsel which is not shown in the record, the court pronounced judgment for the plaintiff, for the amount prayed for (R. 79), thereby giving full faith and credit to the Illinois judgment. The journal entry of the judgment of the District Court of

Pontotoc County, Oklahoma (R. 208-210), is shown in the appendix hereto attached, as Exhibit 14.

The defendant W. R. Britton filed his motion for new trial (R. 211-212), which was overruled by the court on May 20, 1953 (R. 218-219), and said defendant prosecuted his appeal to the Supreme Court of the State of Oklahoma, and filed in said court his petition in error (R. 1-a, 1-c), on November 3, 1953, together with a case-made, showing a complete record of the proceedings in the District Court of Pontotoc County, Oklahoma.

In all the proceedings in the Supreme Court of the State of Oklahoma, the issue was clearly drawn as to whether the Illinois judgment was entitled to full faith and credit, under Section 1 of Article IV of the Constitution of the United States. Britton's counsel, in their brief, stated the questions involved to be as follows:

> "There are two questions of law involved herein:
>
> "1. Should a judgment obtained by extrinsic fraud in a foreign court be considered final and conclusive in Oklahoma *ipso facto* and no defense be permitted to be interposed against the finality thereof in Oklahoma?
>
> "2. Should the trial court in Oklahoma have allowed the defendant, Britton, to present evidence of such extrinsic fraud in the procurement of the judgment in the Illinois court?"

Mark Gannon's counsel countered in their brief with a statement of their contentions, as follows:

> "1-a. The Circuit Court in and for Fayette County, Illinois, had jurisdiction of the plaintiff, Mark Gannon,

and of the defendant, W. R. Britton, and had undisputed jurisdiction of the subject-matter; and its judgment here in question is binding and conclusive upon the defendant, W. R. Britton, and is entitled to full faith and credit in the courts of the State of Oklahoma.

"1-b. The judgment of a state, rendered in a case in which the court had jurisdiction, has all the force, in another state, of a domestic judgment, and the plea that the judgment was procured by fraud is not available as an answer to an action there on the judgment.

"—*Christmas* v. *Russell*, 72 U.S. 290, 18 L. Ed. 475;

Maxwell v. *Stewart*, 88 U.S. 71, 22 L. Ed. 564.

"1-c. This is particularly true when the fraud alleged does not affect the jurisdiction of the court and does not appear on the face of the judgment roll itself.

"2. The judgment of a sister state, when made the basis of an action in another state, may be impeached on the grounds of fraud, *only when* fraud in the judgment could be set up against it in the courts of the state where it was rendered, *i.e.*, the judgment of the sister state has the same degree of conclusiveness in that foreign state as in the home state."

About a year and one-half after said brief was filed, the said W. R. Britton, plaintiff in error, filed a motion in the Oklahoma Supreme Court, alleging that a few days prior thereto, to-wit, on January 20, 1955, the said Mark Gannon had filed an action in the United States District Court for the Eastern District of Oklahoma, thereby seeking to circumvent the state courts by filing such federal

court action involving the same fact situation, the same questions of law, and the same relief which may be granted to either party by virtue of the action herein pending before the Supreme Court, and that the same and all necessary parties have been joined in the state court action, praying that the Supreme Court of Oklahoma advance said cause for speedy action, and set the same down for oral argument (R. 237-239). The said motion for oral argument appears in full in the appendix attached hereto, as Exhibit 15.

The said Mark Gannon, defendant in error, filed a response to the motion for oral argument (R. 240-242) which response is set out in full in the appendix attached hereto, as Exhibit 16. In said response the defendant in error made no objection to setting the case down for oral argument, and welcomed any action advancing said cause in said court. Said defendant in error admitted filing in the United States District Court for the Eastern District of Oklahoma, Cause No. 3881-Civil; stated that said case did not involve the same questions of law or facts involved in the case pending in the Supreme Court of Oklahoma; stated that said federal court case was in the nature of a creditor's bill; explained the necessity of filing such action, stating that the said W. R. Britton had not given a supersedeas bond on the appeal of this case to the Supreme Court of Oklahoma; that subsequent to the obtaining of said judgment in the District Court of Pontotoc County, Oklahoma, said W. R. Britton had caused to be organized under the laws of the State of Oklahoma, a corporation known as Carroll Oil, Incorporated. Thereafter, on June 18,

1953, had assigned to said corporation oil and gas leases of great value, for the purpose of hindering, delaying and defrauding the defendant in error herein in the collection of his debt and judgment, and that in said federal court case, he was asking to set aside the fraudulent conveyances made by the said W. R. Britton to other parties, to hinder, delay and defraud the said Mark Gannon.

Oral argument was had on March 1, 1955 (R. 243), and the opinion and judgment of the Supreme Court of the State of Oklahoma was delivered and filed on May 3, 1955 (R. 245-249). The said opinion clearly points out that the point involved was whether the judgment of the Illinois court should have full faith and credit in the courts of the State of Oklahoma. And it stated that the trial court "found that under the full faith and credit clause of the Constitution of the United States, it had no right to hear and determine the validity of the defendant's defense raised by its amended answer and cross-petition, and proper testimony in support thereof." The said opinion further states: "The general rule is that a state court is not required to recognize the judgment of a court of another state, territory, or country subject to the jurisdiction of the United States, where the court rendering the judgment was without jurisdiction or judgment was obtained by extrinsic fraud." The opinion further states: "The trial court erred in refusing the proffered evidence of extrinsic fraud," and the Supreme Court thereupon reversed the judgment of the District Court of Pontotoc County, Oklahoma, and remanded the case for new trial. The said opinion is set out in full in the appendix attached hereto, as Exhibit 1. Within the time allowed by the court (R. 252), the defend-

ant in error, Mark Gannon, filed his petition for rehearing (R. 253-254). Said petition for rehearing is set out in full in the appendix attached hereto, as Exhibit 17. In said petition for rehearing, the said defendant in error, Mark Gannon, pointed out a number of errors in the opinion of the Oklahoma Supreme Court, and expressly complained that said court had failed and refused to give full faith and credit to the Illinois judgment, as required by Article IV, Section 1 of the Constitution of the United States, and prayed that a rehearing be granted, and that full faith and credit be given to the judgment of the Circuit Court of Fayette County, Illinois, and that recognition be given to the controlling decisions of the United States Supreme Court, and the Supreme Court of the State of Illinois, which decisions should be binding and controlling on said court.

Thereafter, said Mark Gannon filed his petition to stay issuance of mandate and execution thereof (R. 255-256), again calling attention to the fact that the question involved was a construction of Article IV, Section 1, of the Constitution of the United States, and stating that said defendant in error intended to apply to the Supreme Court of the United States for a writ of certiorari. The plaintiff in error, W. R. Britton, filed a response to said motion, protesting against the stay of the issuance or execution of the mandate of the Supreme Court of Oklahoma (R. 257-258), asserting, among other things, that the Supreme Court of the United States was wholly without jurisdiction to review the decision of the Supreme Court of the State of Oklahoma, and setting up in the brief attached to said

response, that the judgment of the Supreme Court of Oklahoma was not final because it remanded the case for trial to the District Court, and again calling to the attention of the court that said Mark Gannon had filed an ancillary action in the United States District Court for the Eastern District of Oklahoma. A copy of said response appears in full in the appendix attached hereto, as Exhibit 18. Said defendant in error, Mark Gannon, filed a reply to said response (R. 259-262), which reply is shown in full in the appendix attached hereto, as Exhibit 19. In said reply, it is pointed out that the Supreme Court of the United States is the final arbiter as to its jurisdiction to grant certiorari, and that said Court had heretofore pointed out that Section 1257, U.S.C., had not been intended to preclude the review of a federal question which is in fact ripe for adjudication when tested against the policy of said Section 1257. *Pope* v. *Atlantic Coast Line R. Co.*, 345 U.S. 379, 97 L. Ed. 1094, 73 Sup. Ct. 749. In said reply, it was also pointed out that it was necessary that the execution of mandate be stayed in order to protect the rights of Mark Gannon in the suit filed in the United States District Court for the Eastern District of Oklahoma, to set aside fraudulent conveyances made by Britton in an attempt to hinder, defraud and delay the said Gannon in the collection of his debt and judgment against Britton. It appearing that this case pending in the United States District Court for the Eastern District of Oklahoma may be considered a companion case as that term is used in Rule 23, paragraph 1(i), we attach hereto in the appendix, as Exhibit 20, the order of the United States District Court for the Eastern District of Oklahoma, made on the 1st day of

July, 1955, staying further proceedings in that case until final adjudication of the case in the state court.

(h) ARGUMENT

We believe that unquestionably, the Supreme Court of the State of Oklahoma has decided a federal question in a way not in accord with the applicable decisions of this Court, in that they have held that the judgment of the Circuit Court of Fayette County, Illinois, is not entitled to full faith and credit in the courts of the State of Oklahoma, but is subject to the defense of alleged extrinsic fraud, alleged to have been practiced by a stranger to said Illinois suit, a brother to the plaintiff in this suit, and notwithstanding the fact that the court in Illinois had jurisdiction of the subject-matter and jurisdiction of the defendant W. R. Britton by personal service upon him, as shown by the authenticated record (R. 112), and by the defendant's admission (R. 65).

At all times during the proceedings in the Oklahoma courts, this petitioner has contended that the judgment of the Circuit Court of Fayette County, Illinois, wherein Mark Gannon obtained a judgment against W. R. Britton, was entitled to full faith and credit in the courts of Oklahoma, under the provisions of Article IV, Section 1 of the Constitution of the United States; that if there is any vestige of truth in the allegations which the said W. R. Britton has sought to incorporate in his answer, his amended answer, and his second amended answer tendered to the District Court of Pontotoc County, Oklahoma, alleging fraud practiced by the brother of the plaintiff in said Illinois action,

a stranger to the record, preventing the defendant W. R. Britton from defending said action in the Illinois court, then such defense should have been set up in the Circuit Court of Fayette County, Illinois, either at the time of the trial, or by motion or bill in the nature of a bill of review, *in the same court.*

The Illinois judgment is final in the State of Illinois, and cannot be collaterally attacked in any court in the State of Illinois, and consequently, cannot be collaterally attacked in the courts of the State of Oklahoma. As stated by this Court in the case of *Roche* v. *McDonald* (1928), 275 U.S. 449, 72 L. Ed. 365, 48 Sup. Ct. 142, 53 A.L.R. 1141,

> "It is settled by repeated decisions of this court that the full faith and credit clause of the Constitution requires that the judgment of a state court which had jurisdiction of the parties and the subject-matter in suit, shall be given in the courts of every other state the same credit, validity, and effect which it has in the state where it was rendered and be equally conclusive upon the merits; and that only such defenses as would be good to a suit thereon in that state can be relied on in the courts of any other state."

The same rule has been rigidly adherred to, down to the present date.

Then we look to the decision of the highest court of the State of Illinois, to see what credit, validity and effect would there be given to this judgment rendered by the Circuit Court of Fayette County, Illinois, in favor of Mark Gannon and against W. R. Britton, and what defenses could there be urged on a collateral attack against such judgment. We think this question is fully answered, and

the various phases of it carefully explained, by the Supreme Court of the State of Illinois, in the case of *People* v. *Sterling*, 357 Ill. 354, 192 N.E. 229 (1934), in a case where the Circuit Court of Cook County, Illinois, was asked to hold void and of no force and effect an order and judgment of the Circuit Court of Sangamon County, Illinois. The pertinent holdings of the court are briefly and concisely stated in Syllabi 2, 3 and 4, shown at page 229 of 192 Northeastern Reporter, as follows:

> "2. Courts. Decree of court of competent jurisdiction cannot be set aside for fraud, by court of equal jurisdiction which did not render decree.
>
> "3. Judgment. Where no process is commenced which would void judgment in mode and at time prescribed by law, judgment of court having jurisdiction of subject-matter and parties is conclusive upon same parties in any other proceeding, or before any other tribunal.
>
> "4. Judgment. Decree is invalidated by fraud which prevents court from acquiring jurisdiction, but not by fraud occurring in proceedings after jurisdiction is acquired."

The rules laid down in this syllabi are fully supported by the language of the court in the body of the opinion. We quote from the body of the opinion as follows:

> "In this bill, as compared with the original bill in Sangamon County, there is an identity of parties, of cause of action, of subject-matter, and of relief prayed. We must therefore at the beginning of our inquiry determine whether or not it is true, as appellant contends, that fraud vitiates every transaction into which it enters, even to the extent of so far invalidating a

decree of a court of competent jurisdiction that it can be held for naught by another court of equal, but no greater, jurisdiction when later called in question between the same parties, concerning the same subject-matters, and praying for the same relief. If such is the rule, it must necessarily follow that the second litigation would be no more conclusive than the first had been, nor, for that matter, would the third or fourth, or any other number. The unqualified adoption of such a rule would be so disruptive of the orderly processes of our courts and so fatal to the well-known principle that it is desirable that litigation should have an end, that we have examined the subject with some care. We find upon our examination that the rule is not as contended for by the people, but quite the contrary."

That court said further, at page 232 of 192 Northeastern Reporter:

"Upon the other hand, we find the rule to be firmly established in American Jurisprudence that a judgment of a court of competent jurisdiction, having jurisdiction of the subject and the parties by legal process duly served, where no appeal, writ of error, certiorari, review or other legal process lies for revising, reversing, or affirming such judgment, or where no such process is commenced by the party who would void the judgment in the mode and at the time prescribed by law, is conclusive upon the same parties in any other proceeding in law, in equity, or before any other judicial tribunal."

Further, on page 233 of the same opinion, the Supreme Court of Illinois said:

"(4) Notwithstanding these authorities and this well-established principle, the appellant contends that

> because the decree in the Sangamon county circuit court was procured by fraud it must be treated as a nullity. In considering this point it must be borne in mind that there are two classes of fraud drawn in question in cases of this kind: First, there is that kind of fraud which prevents the court from acquiring jurisdiction or merely gives it colorable jurisdiction; and, second, that kind of fraud which occurred in the proceedings of the court after jurisdiction had been obtained, such as perjury, concealment, and other chicanery. The first variety of fraud will invalidate the decree, rendering it an entire nullity. On the other hand, it is well established that the second class has no such legal effect."

In the same opinion, the Illinois Supreme Court said further:

> "This leaves for our consideration only the final question of whether a bill in the nature of a bill of review may be brought in any court other than the one in which the original decree was entered. It is clearly established in this state that it cannot. * * * A bill to review a decree in chancery can only be filed in the court wherein the decree sought to be reviewed was pronounced. * * * One court cannot review the decree of another court, even though both courts have concurrent original jurisdiction. A bill of review must be filed in the court where the record of the decree remains and where the decree was pronounced."

This case was followed by the Supreme Court of the State of Illinois, in the case of *Wood* v. *First National Bank of Woodlawn*, 383 Ill. 515, 50 N.E.2d 830, 834 (1943), wherein the court said:

> "Plaintiffs cannot maintain this action as a bill of review based on the fraud of the master. They claim

the fraud vitiated the sale and left the court without jurisdiction to approve it. As has been stated, the plaintiffs in this suit were defendants in the foreclosure action, and that the court had jurisdiction of them and of the subject-matter is not questioned. Jurisdiction of the subject-matter is the power to adjudge concerning the general question involved, and if a complaint states a case belonging to a general class over which the authority of the court extends, the jurisdiction attaches and no error committed by the court can render the judgment void. If a judgment is collaterally attacked under such circumstances of jurisdiction, it is immaterial how irregular or erroneous its proceedings may have been. Such a judgment is binding on the parties and on every court unless reversed or annulled in a direct proceeding. If there is a total want of jurisdiction in a court, either as to the subject-matter or as to the parties, its proceedings are an absolute nullity and no rights are created by them, and they may be pronounced void when collaterally attacked. *People* v. *Sterling*, 357 Ill. 354, 192 N.E. 229; *Miller* v. *Rowan*, 251 Ill. 344, 96 N.E. 285; *People ex rel. Raymond* v. *Talmadge*, 194 Ill. 67, 61 N.E. 1049."

In that case the court quoted at length from the case of *People* v. *Sterling, supra*, as to the kinds of fraud that will invalidate a decree.

Again, in the case of *Dean* v. *Kellogg* (1946), 394 Ill. 495, 68 N.E 2d 898, 903, the Supreme Court of Illinois said:

"The allegations of the complaint are not sufficient to invalidate the judgment on collateral attack because the alleged fraud of Kellogg was not of the type which attempted to give the court a colorable jurisdiction. If the alleged facts were true it would only show perjury or chicanery in obtaining judgment after juris-

diction was acquired. There is no fact alleged which would show jurisdiction to hear the case was not acquired in the regular manner. The rule as to the type of fraud which will render a judgment void upon collateral attack is well settled."

Immediately following this quotation, the Supreme Court of Illinois again quoted from the case of *People* v. *Sterling, supra,* as to the two kinds of fraud that may be involved, being the same quotation which we have given above. This doctrine has been affirmed by the courts of Illinois in many other cases, wherein the case of *People* v. *Sterling, supra,* has been followed. Among those cases are:

—*Steffens* v. *Steffens* (1949), 338 Ill.App. 599, 88 N.E.2d 502, 503, affirmed by the Supreme Court of Illinois, January 18, 1951, 408 Ill. 150, 96 N.E.2d 458;

Department of Revenue v. *Joch* (Supreme Court of Illinois) (1951), 410 Ill. 308, 102 N.E.2d 155, 159.

We here call attention to the fact that in the opinion of the Supreme Court of Oklahoma which we here ask to have reviewed, no cases from the Supreme Court of the State of Illinois were cited to justify that opinion. The only Illinois cases cited in that opinion were cases from the Illinois Court of Appeals, which is not the highest court of that state. We think if those cases from the Illinois Court of Appeals are carefully read, they cannot be said to be in conflict with the cases of the Supreme Court of Illinois which we have above quoted; but even if they were in conflict with the Supreme Court of Illinois, they could

not overrule that higher court, and the principles announced in the decisions of the Supreme Court of the State of Illinois would still be the law as established in that state.

We might also call attention to the fact that the United States Court of Appeals for the Eighth Circuit, in the case of *Turner* v. *Alton Banking and Trust Company* (1948), 166 F.2d 305, 309, recognized as the established rule in the State of Illinois, the principle laid down in the quotations we have above set out from the Illinois Supreme Court, and summed up that rule as follows:

> "Fraud, (perjury, concealment, and other chicanery) resorted to in the proceedings beyond the point of creating foundational jurisdiction, does not make the order, decree or judgment void and subject to collateral attack."

The opinion and judgment of the Supreme Court of the State of Oklahoma, which we here seek to have reviewed, is not in accord with the applicable decisions of this Court.

At an early date, this Court held that the judgment of a state court rendered in a case in which the court had jurisdiction, has all the force, in another state, of a domestic judgment, and the plea that the judgment was procured by fraud is not available as an answer to an action there on the judgment. *Christmas* v. *Russell,* 5 Wall. 290, 18 L. Ed. 475. In the body of that opinion, this Court said:

> "Indeed, the court in effect, say that the rule is undeniable that the judgment or decree of a court possessing competent jurisdiction is final, not only as to the subject thereby determined, but as to every other

matter which the parties might have litigated in the cause, and which they might have had decided."

In the case of *Maxwell* v. *Stewart* (1875), 88 U.S. 71, 22 L. Ed. 564, the Court said:

"In *Christmas* v. *Russell,* 5 Wall. 304 (72 U.S., XVIII, 479), this court held that fraud could not be pleaded to an action in one State upon a judgment in another. With this we are satisfied."

Other cases in this Court which have frequently cited and consistently followed the rule laid down in those two early cases, are as follows:

—*Hanley* v. *Donaghue* (1885), 116 U.S. 1, 29 L. Ed. 535;

Simmons v. *Saul* (1891), 138 U.S. 439, 34 L. Ed. 1054, 11 Sup. Ct. 369; held expressly that fraud in foreign judgments could not be pleaded;

Fauntleroy v. *Lum* (1908), 210 U.S. 230, 52 L. Ed. 1039, 28 Sup. Ct. 641;

Bigelow v. *Old Dominion Copper Mining and Smelting Company* (1912), 225 U.S. 111, 56 L. Ed. 1009;

Williams v. *North Carolina* (1942), 317 U.S. 287, 87 L. Ed. 279, 63 Sup. Ct. 207;

Magnolia Petroleum Company v. *Hunt* (1944), 320 U.S. 430, 88 L. Ed. 149, 64 Sup. Ct. 208;

Union National Bank v. *Lamb* (1949), 337 U.S. 42, 93 L. Ed. 1190, 1195, 69 Sup. Ct. 911;

Morris v. *Jones,* 329 U.S. 545, 67 Sup. Ct. 451, 91 L. Ed. 488;

Titus v. *Wallick* (1939), 306 U.S. 282, 83 L. Ed. 653, 59 Sup. Ct. 557;

Roche v. *McDonald* (1928), 275 U.S. 449, 72 L. Ed. 365, 48 Sup. Ct. 142, 53 A.L.R. 1141;

Sherrer v. *Sherrer* (1948), 334 U.S. 349, 92 L. Ed. 435, 68 Sup. Ct. 1090.

In the case of *Union National Bank* v. *Lamb* (1949), *supra*, this Court, after discussing many of the earlier cases above cited, stated:

> "It is the judgment that must be given full faith and credit. In neither case can its integrity be impaired, save for attacks on the jurisdiction of the court that rendered it."

In the case of *Sherrer* v. *Sherrer*, *supra*, this Court said:

> "If respondent failed to take advantage of the opportunities afforded him, the responsibility is his own. We do not believe that the dereliction of a defendant under such circumstances should be permitted to provide a basis for subsequent attack in the courts of a sister state on a decree valid in the state in which it was rendered."

While the Supreme Court of Oklahoma, in its opinion, did not expressly hold that the plaintiff Mark Gannon was not the real party in interest, it apparently gave great weight to that contention advanced by Britton.

Undoubtedly, the Oklahoma courts may not constitutionally refuse to entertain a suit on the judgment of a sister state by one in whose favor it was rendered, on the

ground that the plaintiff is not the real party in interest, where he was regarded by the courts of the state rendering the judgment, as having sufficient interest in the claim in suit, to recover thereon. This court said, in the case of *Titus* v. *Wallick, supra,* as follows:

> "It is the judgment and not the cause of action which gave rise to it for which credit is claimed, and the constitutional mandate requires credit to be given to a money judgment rendered on a civil cause of action in another state, even though the forum would have been under no duty to entertain the suit on which the judgment was founded. *Christmas* v. *Russell,* 5 Wall. 290, 18 L.ed. 475; *Fauntleroy* v. *Lum,* 210 U.S. 230, 52 L.ed. 1039, 28 S.Ct. 641; *Roche* v. *McDonald,* 275 U.S. 449, 72 L.ed. 365, 48 S.Ct. 142, 53 A.L.R. 1141; *Milwaukee County* v. *M. E. White Co., supra* (296 U.S. 277, 80 L.ed. 228, 56 S.Ct. 229).
>
> "Even though the Ohio court might have declined to recognize petitioner as the proper party to sue upon the assigned claim, a suit upon a judgment of another state, by virtue of the Constitution, stands upon a different footing. The Ohio court is not free to withhold from petitioner, the record owner of a judgment valid and enforceable by him in New York, the full benefit of the constitutional command that the judgment shall receive in the courts of Ohio such faith and credit as it is entitled to receive in New York."

FINALITY OF THE JUDGMENT OF THE OKLAHOMA COURTS

The opinion of the Supreme Court of Oklahoma, in the case of Britton v. Gannon, shown in the appendix hereto as Exhibit 1, is final in its denial of full faith and credit to the judgment rendered by the Circuit Court of Fayette County, Illinois. While it remanded the case for new trial, it expressly prohibited the District Court of Pontotoc County, Oklahoma, from giving full faith and credit to the Illinois judgment. The Supreme Court of Oklahoma said: "The trial court erred in refusing the proffered evidence of extrinsic fraud." The evidence of extrinsic fraud proffered by Britton goes to the question as to whether or not Mark Gannon was the real party in interest, and as to whether or not the statements of "Spike" Gannon, a stranger to this suit, constituted such fraud as would make the judgment of the Illinois court void, even though that Illinois court had jurisdiction of the subject-matter, and had jurisdiction of the person of W. R. Britton, and the Oklahoma Supreme Court expressly says that such evidence of extrinsic fraud is "not for the purpose of reviewing, setting aside, modifying, or annulling the judgment of the sister state, but to prevent its enforcement in the collateral court." This is an express denial of full faith and credit to the Illinois judgment, and the federal question is now clearly "ripe for adjudication." In a case similar in principle, this Court said:

> "Ordinarily, then, the overruling of a demurrer, like the issuance of a temporary injunction, is not a 'final' judgment.

"Yet we are not bound to determine the presence or absence of finality from a mere examination of the 'face of the judgment.' We have not interpreted § 1257 so as to preclude review of federal questions which are in fact ripe for adjudication when tested against the policy of § 1257."

—*Pope* v. *Atlantic Coast Line R. Co.* (1953), 345 U.S. 379, 97 L. Ed. 1094, 73 Sup. Ct. 749.

In the case of *Johnson* v. *Muelberger* (1951), 340 U.S. 581, 95 L. Ed. 552, 71 Sup. Ct. 474, where, as in the case at bar, the trial court had held that a foreign judgment was entitled to full faith and credit, and that judgment was reversed by the highest court of the State of New York, and remanded for further trial, this Court said:

"The Appellate Division affirmed the Surrogate's decree *per curiam*, 275 App.Div. 848, 88 NYS2d 783, but the New York Court of Appeals reversed. 301 NY 13, 92 NE2d 44. The remittitur remanded the case to the Surrogate 'for further proceedings not inconsistent with' the opinion of the Court of Appeals. But in light of the record before us we assume that the requirement of Florida for a residence of 90 days as a jurisdictional basis for a Florida divorce is no longer open as an issue upon return of these proceedings to the Surrogate's Court. Accordingly the judgment under review is a final decree."

In the case of *Radio Station WOW, Inc.*, v. *Johnson*, 326 U.S. 120, 89 L. Ed. 2092, 65 Sup. Ct. 1475, certiorari was granted although the judgment in the state court was not final, on the theory that the only federal question which could arise in the case, had been finally determined by the state court. Therein, this Court said:

> "The presupposition in allowing such review is that the Federal questions that could come here have been adjudicated by the State court, and that the accounting which remains to be taken could not remotely give rise to a Federal question."

The case of *Titus* v. *Wallick* (1939), 306 U.S. 282, 83 L. Ed. 653, 59 Sup. Ct. 557, involved the attempt of the petitioner to enforce a New York judgment in the courts of Ohio. The defenses interposed were that the petitioner was not the real party in interest in the Ohio suit, and that the judgment had been procured in New York by fraud. The trial court sustained the defenses, the Ohio Court of Appeals affirmed, holding that the judgment sustaining the defenses did not deny the New York judgment the full faith and credit required by the Constitution. On appeal to the Supreme Court of Ohio, the appeal was dismissed on the ground that the case involved no debatable constitutional question. This Court granted certiorari, and in the body of the opinion said:

> "When a state court refuses credit to the judgment of a sister state because of its opinion of the nature of the cause of action or the judgment in which it is merged, an asserted Federal right is denied, and the sufficiency of the grounds of denial are for this court to decide." Citing many cases.

There is a strong similarity between the facts in that case, and this case, the principal difference being that in that case, the trial court refused to give full faith and credit to the foreign judgment, and was sustained by the highest courts of Ohio. In the case at bar, the trial court gave full faith and credit to the Illinois judgment, and the

highest court of the State of Oklahoma reversed the case, refusing to give full faith and credit to the Illinois judgment, and remanding the case for trial on issues inconsistent with any theory of full faith and credit to the foreign judgment.

In the case of *Carondelet Canal and Navigating Company* v. *Louisiana*, 233 U.S. 362, 388, 58 L. Ed. 1001, 34 Sup. Ct. 627, where the judgment of a state court was not final, but would finally dispose of federal questions, this Court considered appeal on writ of error. The state court had directed the delivery of most of the canal property to the state, effectively disposing of the federal questions, but had reversed for further decision, some question as to the other property, and this Court said (58 L. Ed. 1005):

> "In the case at bar there is distinct and explicit finality, and the further proceedings are directed to apply only to the 'questions reserved.' And it is to be assumed this was purposely done to give finality to the questions not reserved, so that the decree could be immediately executed upon the property involved requiring it to be delivered into the possession and administration of the state. This disposition, we can easily conceive, the court considered necessary to the rights which the state was adjudged to have, and the remedy commensurate with them. The decree, therefore, had a definiteness which did not exist in the cited cases, the Federal rights asserted by the canal company were injuriously disposed of. The ground of dismissal of the writ of error based on the judgment is not, therefore, sustained."

Likewise, in the case at bar, the opinion of the Supreme Court of Oklahoma has definiteness in that it denies

full faith and credit to the Illinois judgment, and remands the case for trial on issues which could have been tried and determined before the Circuit Court of Fayette County, Illinois, but could not thereafter, be raised as grounds for collateral attack on such judgment in any other court in the State of Illinois, and as aptly stated in the case of *Sherrer* v. *Sherrer, supra,* "If respondent failed to take advantage of the opportunities afforded him, the responsibility is his own." The dereliction of the respondent under such circumstance should not be permitted to provide a basis for subsequent attack in the courts of sister states, and the remand of the case by the Supreme Court of Oklahoma to the trial court, for trial on those issues, is a final denial of full faith and credit to the Illinois judgment.

In the case of *Harriman* v. *Northern Securities Company,* 197 U.S. 244, 299, 49 L. Ed. 739, 25 Sup. Ct. 493, where the United States Circuit Court of Appeals merely reversed the decision of the trial court, thereby preventing the trial court's decision from being absolutely final, certiorari was nevertheless allowed by this Court, and this Court, in the first paragraph of that opinion, said:

> "In applying to this Court for the writ of certiorari counsel for complainants insisted that the circuit court of appeals had practically disposed of the entire controversy on the merits, although its decree only reversed the order of the circuit court granting the preliminary injunction. We accepted that view and granted the writ, in the circumstances, notwithstanding the decree was not final. In our opinion the record presented the whole case to that court in such wise that it might properly have been finally disposed of

in terms by its decree, in accordance with the well-settled rule upon that subject."

We think it must likewise be said as to the case at bar, that the record before the Supreme Court of the State of Oklahoma presented the whole case, in such wise that the court should have affirmed the judgment of the trial court, granting full faith and credit to the Illinois judgment.

This case involves the important issue as to what extent full faith and credit shall be given by the courts of one state to the judgment of a sister state, and whether or not the courts of one state can try issues between the parties which could and should have been raised in the original action in the sister state, wherein the first state had jurisdiction of the subject-matter and of the parties.

In this case, full faith and credit has been denied the judgment of the Illinois court by the Supreme Court of Oklahoma, and the federal question here involved is in fact ripe for adjudication. It is particularly a matter of importance that this federal question be determined at this time, in order that the United States District Court for the Eastern District of Oklahoma can determine what weight it should give to the judgment in the case of Mark Gannon v. W. R. Britton, in the District Court of Pontotoc County, Oklahoma, and whether or not it can grant relief to the said Mark Gannon on account of the transfer of valuable property by W. R. Britton to other parties, after the judgment in the District Court of Pontotoc County was obtained against him. The issues in this case in the United States

District Court for the Eastern District of Oklahoma, were brought to the attention of the Supreme Court of Oklahoma, and the reference thereto appears in Exhibits 15, 16, 18 and 19 in the appendix attached to this petition, and the order of the said United States District Court, staying further proceedings in that case until the validity of the judgment of the District Court of Pontotoc County, Oklahoma, is established, appears in the appendix attached hereto, as Exhibit 20.

If full faith and credit is denied to the Illinois judgment, and petitioner is compelled to retry the case in the District Court of Pontotoc County, Oklahoma, on the issues raised by respondents, *i.e.*, (1) whether or not Mark Gannon is the real party in interest; and (2) whether or not Britton is entitled to relief on account of alleged extrinsic fraud practiced on him by petitioner's brother who is alleged to be the real party in interest; then even though petitioner is successful in such retrial on the merits, there is serious danger that he may lose substantial rights that are now being safeguarded by the suit in the nature of a creditor's bill, now pending in the United States District Court for the Eastern District of Oklahoma, and that such rights, once lost, cannot thereafter be recovered or enforced.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the Supreme Court of the State of Oklahoma, to review the decision and opinion of the Supreme Court of the State of Oklahoma, in the case of W. R. Britton, Plaintiff in Error, v. Mark Gannon, Defendant in

Error, No. 36249, and that the questions therein involved be determined by this Court, as provided by law; that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate, and that the said judgment of the Supreme Court of the State of Oklahoma be reversed by this Honorable Court.

Respectfully submitted,

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Ada, Oklahoma;

WALTER J. KLOCKAU, JR.,
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Counsel for Petitioner.

Of Counsel:

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East Moline, Illinois.

September, 1955.

APPENDIX

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

W. R. Britton, Plaintiff in Error,
v.
Mark Gannon, Defendant in Error,

No. 36,249
Filed in Supreme Court of Oklahoma, May 3, 1955.
ANDY PAYNE, Clerk.

SYLLABUS

1. A state court is not required to recognize the judgment of a court of another state, territory, or country subject to the jurisdiction of the United States, where the court rendering the judgment was without jurisdiction or where the judgment was obtained by extrinsic fraud.

2. In action on judgment of court of another state, defendant may impeach the judgment on allegations of fraud in procuring it, extrinsic to the merits of the cause.

APPEAL FROM THE DISTRICT COURT OF PONTOTOC COUNTY,

Honorable John Boyce McKeel, Judge.

Action on judgment of Illinois court. Judgment for plaintiff and defendant appeals.

REVERSED.

Busby, Stanfield, Busby & Deaton,
By David Busby, Ada, Oklahoma, for plaintiff in error.
McArthur & Orton,
By C. L. McArthur, Ada, Oklahoma,
for defendant in error.

[APPENDIX]

ARNOLD, J.:

Mark Gannon brought this action in the District Court of Pontotoc County against W. R. Britton on a foreign judgment rendered in favor of said Gannon against Britton in the Circuit Court of Fayette County, Illinois, in the sum of $18,000.

Defendant filed answer consisting of a general denial and allegations to the effect that Mark Gannon was only a nominal party; that the real party in interest was Roy or "Spike" Gannon, brother of Mark Gannon; that said "Spike" Gannon had advised defendant that he was filing suit to recover certain personal property owned by him and defendant which had been sold pursuant to mortgage foreclosure proceedings and that Britton was a necessary defendant, but that no judgment would be taken against him, and relying on these representations, although served with summons, Britton made no effort to defend such suit and did not know that judgment had been taken against him until the instant suit was filed. Upon motion of plaintiff and over the objections and exceptions of defendant all allegations of defendant's answer except his general denial were stricken.

When the case came on for trial defendant moved for a jury trial, which motion was overruled and exceptions allowed. Plaintiff offered in evidence authenticated copies of the alias request for summons, the summons and return thereon showing personal service on Britton, affidavit as to military service, motion for leave to file amended complaint, affidavit of mailing, notice, the amended complaint with exhibits thereto, including authenticated copy of the judgment in the Illinois case and rested. Defendant offered evidence, which was objected to by plaintiff and objection sustained, to the effect that one Roy "Spike" Gannon about July 10, 1946, called defendant offering to purchase a one-third interest in Britton's drilling business; that defendant

Britton owned about $65,000 worth of drilling equipment upon which there was a $20,000 mortgage; that Gannon offered to pay $15,000 for a one-third interest, to which Britton agreed; that Gannon paid Britton $13,000 in cash, saying he did not want any record made of the transaction as he had income tax troubles; that it was agreed that Gannon would share one-third of the profits, if any, made by use of the drilling equipment, which usually ran about $3,000 per well; that it was agreed that the remaining $2,000 of the purchase price of the one-third interest would be deducted from Gannon's share of the profits; that later "Spike" Gannon asked Britton to sign a bill of sale putting the one-third interest in his brother's name, Mark Gannon (plaintiff here); that actually Mark Gannon never had any interest in the business but "Spike" Gannon at all times was a silent partner in the business; that five wells were drilled after this partnership was formed, but three were dry and the other two were not profitable, so that the partnership became unable to pay the installments on the mortgage and the mortgage on the rig and equipment were foreclosed; that after the rig and equipment were sold at public auction in the foreclosure proceedings in January, 1947, "Spike" Gannon and his attorney came to Britton in Illinois and told Britton that because of certain irregularities in the foreclosure proceedings they might be able to get a portion of the equipment back; that to do this it was necessary to file suit, making Britton a party, but so far as Britton was concerned it was a friendly suit and Britton would not be sued for any money and Britton need not worry about any judgment; that they needed Britton's co-operation, which Britton agreed to give, giving Gannon and his attorney a sworn statement as to all the facts concerning the indebtedness on the equipment; that summons was served on Britton; that the original complaint (which was in evidence) asked for no relief against Britton other than that a lien be declared in Gannon's favor against the interest of Britton in the equipment which Gannon sought

to recover; that thereafter on several occasions Gannon told Britton to forget about the case, that Britton would not need a lawyer, that Gannon's lawyer would take care of Britton's interest; that relying on Gannon's representations Britton returned to his home in Ada, Oklahoma, and heard nothing further about the case until the instant suit on the foreign judgment was filed in Pontotoc County on February 21, 1952; that Britton never received notice that the original complaint had been amended to ask for personal judgment against him, or that the suit had been dismissed with prejudice against all defendants except Britton; that Mark Gannon had never made any inquiry about the progress of the business but that "Spike" Gannon had kept in close contact with it all the time of its existence.

The court found that under the full faith and credit clause of the Constitution of the United States it had no right to hear and determine the validity of the defendant's defense raised by his amended answers and cross petition and proffered testimony in support thereof; and entered judgment in favor of plaintiff for the amount prayed for.

Defendant contends that the court erred in refusing to allow him to present evidence to the effect that the judgment in Illinois, the basis of the present suit, was procured by extrinsic fraud and therefore not entitled to full faith and credit in Oklahoma.

The general rule is that a state court is not required to recognize the judgment of a court of another state, territory, or country subject to the jurisdiction of the United States, where the court rendering the judgment was without jurisdiction or judgment was obtained by extrinsic fraud. *Stephens et ux* v. *Thomasson*, 63 Ariz. 187, 160 P.2d 338, and cases therein cited. Whatever plea would be good in the state in which the judgment was rendered may be pleaded in suit on the judgment in any other court in the United States. *Ibid.* Extrinsic fraud has been defined as

any fraudulent conduct of the successful party which was practiced outside of an actual adversary trial directly and affirmatively on the defeated party whereby he was prevented from presenting fully and fairly his side of the cause. Included in such definition are false representations that the defeated party is merely a nominal party against whom no relief is sought, false promises of compromise, concealment of the suit, kidnapping of witnesses, and the like. *Calkin et al* v. *Woolcott et al*, 182 Okla. 278, 77 P.2d 96. In such cases a court of equity had power to annul the decree so obtained. *Ibid.* See also *American Railway Express Co.* v. *Louis Murphy*, 234 Ill. App. 346, *Village of Hartford* v. *First National Bank of Wood River*, Ill. App.; 30 N.E. 2d 524. Some cases, as *United States* v. *Throckmorton*, 99 U.S. 61, 25 L.Ed. 83, put this on the ground that in such cases there has never been a real contest in the hearing of the case; others, such as *Williams* v. *State of North Carolina*, 65 S.Ct. 1092, cited as authority in *Stephens* v. *Thomasson, supra*, on the ground that such conduct on the part of the successful party prevented the court from having jurisdiction to render the judgment which was rendered. Others, such as *Levin et al* v. *M. Gladstein*, 142 N.C. 482, 55 S.E. 371, put it on the ground that a foreign court is not required to give greater faith and credit to the judgment than it is entitled to at home, and when the state in which the judgment was rendered would enjoin the enforcement of such judgment because of the circumstances under which it was obtained, the sister state may do likewise.

Regardless of the reason assigned for the rule, the weight of authority is overwhelming that a defense of extrinsic fraud of the nature here sought to be plead and proved may be interposed in a suit on a foreign judgment, not for the purpose of reviewing, setting aside, modifying, or annulling the judgment of the sister state, but to prevent its enforcement in the collateral court. See *American*

Railway Express Co. v. *Murphy, supra; Reisman* v. *Central Mfg. District Bank,* Ill. App., 30 N. E. 2d 524. The trial court erred in refusing the proffered evidence of extrinsic fraud.

Reversed and remanded for a new trial.

JOHNSON, CJ., WILLIAMS VCJ. and CORN, BLACKBIRD and JACKSON, JJ., concur.

EXHIBIT 2

STATE OF ILLINOIS)
: SS. IN THE CIRCUIT COURT
COUNTY OF FAYETTE)

MARK GANNON, Plaintiff,
v.
THOMAS S. DORAN, W. R. BRITTON d/b/a W. R. Britton Drilling Company, First National Bank of Vandalia, and General Finance Corporation, a corporation, Defendants. No. 47-1052.

DECREE

The above cause coming on to be heard on this 29th day of September, A. D. 1951, and upon motion of the Plaintiff, cause is dismissed as to Defendant Thomas S. Doran, and the First National Bank of Vandalia; and it appearing to the Court that Defendant W. R. Britton, d/b/a W. R. Britton Drilling Company was personally served with process of summons more than twenty (20) days prior to the third Monday in the month of September, 1951, and that he has not filed his answer or appearance in said cause, and being three times called in open court appears

not, nor anyone for him, it is therefore ordered, adjudged and decreed that the said W. R. Britton be and is hereby declared to be in default.

Now again on this day this cause coming on to be heard upon the amended complaint filed herein which is taken as confessed, and by default as to the Defendant W. R. Britton, and Plaintiff appears in open Court and offers sworn testimony in support of said verified amended complaint, and the Court being fully advised in the premises finds that it has jurisdiction of the parties and of the subject matter hereto and that as alleged in Plaintiff's complaint the Defendant W. R. Britton received the sum of $13,000.00 for an undivided one-third interest in the property described in said complaint at a time when the said Defendant had suffered said property to be mortgaged, and without notification to the said Plaintiff that said property was subject to mortgage, and that thereafter the said Defendant, W. R. Britton upon other occasions mortgaged said property without the knowledge, consent or permission of the Plaintiff, all of which resulted in a loss of said property by virtue of a foreclosure; and it further appearing to the Court that by virtue of agreement between the Plaintiff, and Defendant W. R. Britton, that W. R. Britton agreed to pay to the Plaintiff the sum of $1,000.00 per well, for each well drilled with the oil well drilling equipment described in plaintiff's complaint, and though he often promised to pay the said plaintiff therefor, that he failed, neglected and refused to pay; and it appearing from the evidence that the said W. R. Britton drilled five (5) wells with the oil well drilling equipment described in Plaintiff's complaint after the sale of an undivided one-third interest therein to the Plaintiff and after his agreement to pay to the Plaintiff the sum of $1,000.00 per well, the Court therefore finds that the Defendant is indebted to the Plaintiff on an accounting pursuant to said agreement, in the sum of $5,000.00.

The Court further finds that the Defendant W. R. Britton has wrongfully had and received the sum of $13,000.00 from the Plaintiff, Mark Gannon, and that by his fraud and misconduct he has wrongfully deprived the Plaintiff of the sum of $13,000.00, and should be held to account to the said Plaintiff for the said sum of $13,000.00, in addition to the sum of $5,000.00 earned by reason of the use of the plaintiff's money and wrongfully withheld from the plaintiff.

It is therefore ordered, adjudged and decreed by the Court that any agreement between the said Plaintiff, Mark Gannon, and Defendant, W. R. Britton in the nature of a mining partnership be and is hereby declared to be dissolved and that the Defendant W. R. Britton account to the Plaintiff, Mark Gannon for the total amount of $18,000.00, and that the Plaintiff, Mark Gannon have and recover the sum of $18,000.00 from the Defendant, W. R. Britton, together with costs of this proceeding, and that he have execution therefor.

It is further ordered, adjudged and decreed that the injunction heretofore entered in this cause be and the same is hereby dissolved by agreement of the plaintiff and defendant Thomas S. Doran; that the bond heretofore filed in this cause in connection with writ of injunction be and the same is hereby released, canceled and discharged and case is dismissed as to Thomas S. Doran with prejudice.

ENTER this 20 day of October, 1951

(Signed) Ward P. Holt
Judge

O. K.
(Signed) Robert G. Burnside
Atty for dft. Thomas S. Doran.

ENDORSED:

No. 47-1052. STATE OF ILLINOIS FAYETTE COUNTY In The Circuit Court Mark Gannon, Plaintiff, v. Thomas S. Doran, et al, Defendants. Decree. FILED Oct 27 1951 Paul Houck Clerk of the Circuit Court Fayette County, Illinois. Charles R. Myers Lawyer Vandalia, Illinois Chancery Record 63 page 452

STATE OF ILLINOIS,)
) SS.
COUNTY OF FAYETTE)

I, Paul Houck Clerk of the Circuit Court in and for said County in the State aforesaid, do hereby certify the foregoing to be a true, perfect and complete copy ot Placita, Judges Docket Entries, Judgment Order, Judgment & Execution Docket entry and Decree conforming Judgment

In Case # 47-1052 Mark Gannon v. Thomas S. Doran et al

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at my office in Vandalia this 16th day of November A. D. 1951

(Signed) Paul Houck Clerk.

(SEAL)

STATE OF ILLINOIS,)
) SS.
COUNTY OF Fayette)

I, James G. Burnside Judge of the Circuit Court, do hereby certify that Paul Houck, whose name is subscribed to the foregoing Certificate of Attestation, now is, and was at the time of signing and sealing the same, Clerk of the Circuit Court of Fayette County aforesaid, and keeper of the Records and Seal thereof, duly elected and qualified to office; that full faith and credit are and of right ought to

be given to all his official acts as such in all Courts of Record and elsewhere; and that his said attestation is in due form of law, and by the proper officer.

Given under my hand and seal this 16th day of November A. D. 1951

(Signed) James G. Burnside
(SEAL)

STATE OF ILLINOIS,)
) SS.
COUNTY OF Fayette)

I, Paul Houck Clerk of the Circuit Court in and for said County, in the State aforesaid, do hereby certify that James G. Burnside whose genuine signature appears to the foregoing certificate, was at the time of the signing the same, Judge of the Circuit Court of Fayette County, Illinois duly commissioned and qualified; that full faith and credit are and of right ought to be given to all his official acts as such in all Courts of Record and elsewhere.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed the seal of said Court, at my office in Vandalia, illinois this 16th day of November A. D. 1951

(SEAL) (Signed) Paul Houck Clerk

EXHIBIT "A"

EXHIBIT 3

IN THE DISTRICT COURT WITHIN AND FOR PONTOTOC COUNTY, OKLAHOMA

MARK Gannon, Plaintiff

v. No. 20,262

W. R. Britton, Defendant

PETITION

Comes now the plaintiff Mark Gannon, and for cause of action against the defendant, W. R. Britton, alleges and states:

1. That said plaintiff on the 29th day of September, 1951, by the consideration of the Circuit Court in and for the County of Fayette, State of Illinois, in a cause therein pending in which the said Mark Gannon was plaintiff and the said W. R. Britton was defendant, at a duly authorized term of said court begun on the 27th day of August, 1951, and held at the City of Vandalia in said County, which said court has full jurisdiction of the subject matter and persons and parties, recovered a judgment against the said W. R. Britton in the sum of $18,000.00, plaintiff's debt against said defendant, W. R. Britton; which said judgment still remains in that court in full force and effect, in no wise reversed or annulled, satisfied or set aside; that said defendant, though often requested, has not paid said judgment or sum of money, or any part thereof, to said plaintiff. A duly authenticated, certified copy of said judgment is filed herewith as a part hereof, marked Exhibit "A".

WHEREFORE, the said plaintiff prays judgment against said defendant W. R. Britton, for the said sum of money amounting to the sum of $18,000.00, together with

interest thereon from September 29, 1951, at the rate of 6% per annum, and for all costs of this action.

MARK GANNON, Plaintiff
By McARTHUR & ORTON
By C. L. McArthur
His Attorneys

ENDORSEMENT ON PETITION:

Filed Feb. 21, 1952, and entered in Book 36 at Page 163.
ABE HOLLOWAY, COURT CLERK,
Pontotoc County, Okla.
By W. D. Abbott, Deputy.

EXHIBIT 4

IN THE DISTRICT COURT WITHIN AND FOR PONTOTOC COUNTY
STATE OF OKLAHOMA

MARK GANNON,	Plaintiff,
v.	No. 20,262
W. R. BRITTON,	Defendant

ANSWER

Comes now the defendant, W. R. BRITTON, and for answer to plaintiff's petition filed herein denies each and every allegation therein set forth and demands strict proof thereof.

1. Further answering, defendant asserts that he and the plaintiff were at one time mining partners; that the subject matter which is the basis of the purported judgment plead by plaintiff herein involved partnership property owned by both plaintiff and defendant; that after the action was filed by plaintiff he advised the defendant, W. R. Britton, that he was only seeking a remedy against

Thomas S. Doran and against the First National Bank of Vandalia and certain partnership property; that he lulled this defendant, W. R. Britton, into inaction by advising him to pay no attention to the suit and also advising him that he was not seeking and would not take any personal judgment against W. R. Britton; that said suit was filed in September, 1947, and no further action was taken until the year 1951 by the plaintiff; that in the meantime plaintiff, Mark Gannon, made no effiort to dissolve their mining partnership as provided by the laws of the State of Illinois but continued at all times to lull this defendant, W. R. Britton, into thinking and believing no judgment whatsoever would ever be taken in said cause against W. R. Britton. That plaintiff, Mark Gannon, asserted that his suit was pointed to obtaining judgment against Thomas S. Doran, First National Bank of Vandalia and The General Finance Corporation.

2. Further answering defendant would show that the plaintiff, Mark Gannon, herein has purposely failed to file a certified and authenticated transcript of all the pleadings in the suit filed in the Circuit Court of Vandalia, Illinois, being styled Mark Gannon v. Thomas S. Doran, W. R. Britton, d/b/a W. R. Britton Drilling Company, First Nation[illegible] Bank of Vandalia, and General Finance Corporation, No. 47-1052; that the plaintiff, Mark Gannon, has failed to file herein such authenticated transcript in support of his petition in this cause in this Court.

3. That for all of these reasons your defendant, W. R. Britton, did not employ an attorney in said cause. That more than four (4) years after the filing of said suit the plaintiff by fraud and imposition on the trial court took a purported default judgment against this defendant, W. R. Britton, contrary to all statements and agreements had between them as mining partners; that by reason of the false and fraudulent conduct on the part of plaintiff, Mark Gannon, that said purported judgment sued upon herein

is wholly void on its face and of no force and effect. That during the pendency of said suit that defendant did not then and does not now owe Mark Gannon any sum whatsoever.

WHEREFORE, having fully answered defendant prays that he go hence without costs.

Busby, Harrell & Trice
Attorneys for Defendant

ENDORSEMENT THEREON APPEARS:

Filed May 28, 1952, and entered in Book 36 at Page 163.
ABE HOLLOWAY, COURT CLERK,
Pontotoc County, Okla.,
By W. D. Abbott, Deputy.

EXHIBIT 5

IN THE DISTRICT COURT WITHIN AND FOR PONTOTOC COUNTY
STATE OF OKLAHOMA

MARK GANNON, Plaintiff,

v. No. 20,262

W. R. BRITTON, Defendant.

AMENDED ANSWER AND CROSS PETITION ANSWER

Comes now the Defendant, Roy Britton, and for this amendment to his answer repleads and reaffirms each and every allegation contained in his original answer filed herein. He further alleges and states:

1. That the judgment rendered by the Fayette County *Indiana* Circuit Court was obtained by fraud in the following particulars:

That on or about the 10th day of July, 1946, one Spike Gannon called Roy Britton, the defendant, to his bar and

gambling palace and gave to Roy Britton $13,000.00 in small bills. For said sum of $13,000.00 they agreed that they would enter into a mining partnership and that Spike Gannon would receive 1/3 of the net profits and bear 1/3 of the losses in Roy Britton's drilling business. Gannon insisted that Britton tell no one of the transaction and that he, Gannon, be and remain a so-called "silent partner." That he, Gannon, was at that time under surveillance by and in difficulty with the Federal Bureau of Internal Revenue. Spike Gannon would take no receipt for the $13,000.00 cash in small bills, because he did not want any records made showing the transaction. Some months later he requested Roy Britton to sign a bill of sale of said drilling rig to his brother, Mark Gannon, the plaintiff herein, for Spike Gannon's use and benefit, and for the $13,000.00 Spike Gannon paid the defendant and Roy Britton then executed the bill of sale to Mark Gannon at Spike Gannon's request. However, it was understood between them that said Spike Gannon was the real party in interest and the actual partner of Roy Britton, and not Mark Gannon, the plaintiff herein, and that Mark Gannon's name was used in the place and stead of the name of Spike Gannon, the real owner.

That at the time Spike Gannon bought the above mentioned 1/3 interest with $13,000.00 in cash from Roy Britton, he knew that there were certain mortgages on the drilling rig and equipment. He had both actual and constructive notice of this fact.

That after drilling certain oil wells which were not commercial producers the partnership was no longer able to make the payments which became due upon the mortgages above mentioned. The loan company therefore foreclosed the mortgage and sold the partnership drilling equipment.

That thereafter, on or about the 17th day of November, 1947, Spike Gannon approached Roy Britton and told

Roy Britton he had conferred with his attorney and was advised that due to a legal technicality the foreclosure had not been valid against his (Gannon's) interest, and he asked Roy Britton to help *his* recover said interest. Spike Gannon represented to Roy Britton that in order to effect such a recovery, he Spike Gannon, using his brother Mark's name, had had to join Roy Britton as a defendant together with the various mortgagees, in a suit which Spike Gannon had already filed to recover the drilling equipment. But he assured Roy Britton that there would be no judgment taken against him except to dissolve the partnership with Spike.

That thus lulled into a sense of security by the representations of Spike Gannon, upon which Roy Britton relied, Roy Britton made no effiort to defend against the above mentioned lawsuit which was fraudulently filed in the name of Spike Gannon's brother, Mark Gannon, and although Roy Britton was served with a summons on the 17th day of November, 1947, giving notice of said law suit having been filed, he hired no attorney and took no steps to defend himself because of the above mentioned representations of Spike Gannon made after the filing of said suit.

That thereafter on the 3rd day of February, 1951, nearly three and one-half years after said lawsuit had been instituted, and three years after Roy Britton had moved to Ada, Oklahoma, to be a citizen and home-owner in this community, the petition in said suit was amended to seek the recovery of money from the defendant, Roy Britton. The Petition was thus amended surreptitiously and secretly and without notice to the defendant, Roy Britton.

That thereafter on the 29th day of September, 1951, the lawsuit came to trial without notice to the Defendant, Roy Britton, and the attorney of the sham plaintiff, Mark

Gannon, voluntarily dismissed the suit against all of the other defendants, with prejudice, and fraudulently obtained a judgment against the Defendant, Roy Britton, for $18,000.00.

That there was no evidence taken in the determination of this cause, contrary to law and equity.

That the Defendant, Roy Britton, was never informed nor had any knowledge of the progress of this case until the sham Plaintiff, Mark Gannon, filed this present suit in the District Court of Pontotoc County, Oklahoma, on the 21st day of February, 1952, nearly five and one-half years after said suit was filed.

That the Defendant, Roy Britton, does not now owe nor has he ever owed any money to the Plaintiff, Mark Gannon.

That the sham Plaintiff, Mark Gannon, and his brother, Spike Gannon, came into this court with unclean hands by reason of the fact that they purposely and wilfully lured this Defendant, Roy Britton, into a judicial trap.

That for all the above stated reasons the judgment upon which the sham Plaintiff now seeks to recover is wholly void on its face and is of no force and effect.

WHEREFORE, having fully answered, Defendant prays that he go hence without costs, as to Plaintiff's asserted action.

CROSS PETITION

That the Defendant, Roy Britton, for his Cross Petition and Motion to Make Additional Party Defendant herein alleges and states:

1. That this defendant entered into a mining partnership with one Spike Gannon, the brother of the sham

plaintiff, Mark Gannon, on or about the 10th day of July, 1946.

2. That this defendant has never had any dealings with the sham plaintiff, Mark Gannon, except as the agent of his brother, Spike Gannon; that every action claimed by the said Mark Gannon in his petition was done by the said Mark Gannon as the agent of his brother, Spike Gannon.

3. That the said Spike Gannon should now be made an additional party to the action as he is the true party to this action. Now that this court should enter its order directing that the said Spike Gannon be permitted to be made a party defendant and that he be substituted for the real plaintiff herein, Mark Gannon.

4. That your defendant is entitled to have an accounting as between him and the said Spike Gannon and that had it not been for the action of the said Spike Gannon acting through his brother Mark and lulling this defendant into believing that no action would be taken against him, this defendant would have filed an answer and cross petition against Spike Gannon, seeking a true accounting between them as such partners.

5. That a true accounting between the plaintiff herein, Mark Gannon, agent of Spike Gannon, would show the following, to-wit: That between the time the above mentioned partnership agreement was made and January 13, 1947, the same being the date that the property of the said partnership was sold at foreclosure, certain debts were due and owing by said partnership, in the following approximate amounts:

Payment on principal and interest of $34,000 from General Finance Corporation for months of July, August, September and October of 1946	$18,574.00

Service Charge on $34,000 loan from General Finance Corporation	1,300.00
Loss on three non-commercial wells	4,500.00
National Supply Company of Toledo, Ohio	7,700.00
Frank Manufacturing Company of Tulsa, Oklahoma	8,000.00
Spencer Machine Company of Salem, Illinois	2,000.00
Pioneer Machine and Tool Works	2,500.00
Miscellaneous debts	25,000.00
	$61,574.00

6. That part of the above amounts have been paid by the defendant, and that he is entitled to subrogation therefore.

7. That Spike Gannon is liable for his one-third share of the above set-out partnership debt of approximately $61,574.00, or approximately $20,758.00, as repayment for those sums paid out by Roy Britton and as subrogation for those sums for which Roy Britton may be legally liable.

8. That the exact amount of said partnership obligations will be set out at trial.

WHEREFORE, premises considered, this defendant prays that the plaintiff take nothing by this action; that the said Spike Gannon be made the real party defendant and that said Spike Gannon be required to pay to this defendant the sum of Twenty Thousand Seven Hundred Fifty Eight Dollars ($20,758.00).

Or, in the alternative, this defendant prays that the sham plaintiff, Mark Gannon, be declared the agent of said Spike Gannon and that the sham plaintiff, in behalf of his principal, Spike Gannon, be required to pay to this defendant the sum of Twenty Thousand Seven Hundred Fifty Eight ($20,758.00) Dollars.

WHEREFORE, your defendant by way of answer and cross petition prays this court to make Spike Gannon additional party defendant; that an accounting be then had between him and Spike Gannon and that he have judgment against the said Spike Gannon for the sum of Twenty Thousand Seven Hundred Fifty Eight ($20,758.00) Dollars.

W. R. BRITTON
By his attorneys,
BUSBY, HARRELL & TRICE
By David Busby

ENDORSEMENT THEREON APPEARS:

Filed Dec. 29, 1952, and entered in Book 36 at Page 163.
ABE HOLLOWAY, COURT CLERK,
Pontotoc County, Okla.,
By Abe Holloway, Court Clerk.

EXHIBIT 6

IN THE DISTRICT COURT WITHIN AND FOR PONTOTOC COUNTY, OKLAHOMA

Mark Gannon, Plaintiff

v. No. 20,262

W. R. Britton, Defendant

MOTION TO STRIKE

I.

Comes now the plaintiff, Mark Gannon, and moves the court to strike the defendant's amended answer and cross petition filed herein on December 29, 1952, for the reason that the allegations in said answer consist only of irrelevant and redundant matter and refer to matters and alleged

facts which took place prior to the filing of the original case in the Circuit Court of Fayette County, Illinois, and before the rendition of judgment by said court, the said Circuit Court of Fayette County, Illinois, having jurisdiction of said cause of action and any matters set up in defendant's amended answer and cross petition which may have constituted any defense to plaintiff's original cause of action could and should have been set up in said original action in the Circuit Court of Fayette County, Illinois, and that said judgment of said Illinois Court is now final and is entitled to full faith and credit in this court.

II.

Plaintiff further moves the court to strike the cross petition set out in defendant's amended answer filed December 29, 1952, for the reason that the matters and alleged facts therein contained are irrelevant and redundant and do not constitute any defense to the original action of the plaintiff filed in the Circuit Court of Fayette County, Illinois, should have been set up and litigated in the said Illinois Court, and the said matters set out in said cross petition do not constitute any proper or valid defense to the petition of plaintiff filed herein.

III.

Plaintiff further moves the court to strike from the original answer of the defendant filed herein on May 28, 1952, all of said answer except the first unnumbered paragraph thereof constituting a general denial, and said plaintiff states that paragraphs numbered 1, 2 and 3, of said original answer constitute only irrelevant and redundant matter and do not constitute any defense to the petition of the plaintiff filed herein.

McARTHUR & ORTON
By C. L. McArthur
Attorneys for Plaintiff

ENDORSEMENT THEREON APPEARS:

Filed Jan. 2, 1953, and entered in Book 36 at page 163.
ABE HOLLOWAY, COURT CLERK,
Pontotoc County, Okla.,
By W. D. Abbott, Deputy.

EXHIBIT 7

IN THE DISTRICT COURT WITHIN AND FOR PONTOTOC COUNTY, OKLAHOMA

Mark Gannon,	Plaintiff
v.	No. 20,262
W. R. Britton,	Defendant

ORDER SUSTAINING MOTION TO STRIKE

Now on this 4th day of February, 1953, the plaintiff appearing by his attorneys, McArthur and Orton, and the defendant by his attorney, David Busby, this matter having heretofore been heard by the court and taken under advisement, the court having fully considered the said matter and the argument of counsel thereon, finds that said motion should be allowed and sustained.

It is therefore by the court ordered, adjudged and decreed the motion of plaintiff to strike all of their answer, amended answer and cross petition of the defendant except the general denial therein contained is hereby sustained and said answer, amended answer and cross petition except the general denial therein contained is ordered stricken from said pleadings, to which order of the court the defendant excepts and exceptions are by the court allowed.

Upon request of counsel for the defendant, defendant is allowed five days from this date within which to file a second amended answer.

(Signed) John Boyce McKeel
Judge

ENDORSEMENTS THEREON APPEAR:

Filed Feb. 6, 1953, and entered in Book 36 at Page 136.
ABE HOLLOWAY, COURT CLERK,
Pontotoc Couny, Okla.,
By Billye Cozad, *Court Clerk.*
RECORDED: Journal 68, at Page 74.

EXHIBIT 8

IN THE DISTRICT COURT WITHIN AND FOR PONTOTOC COUNTY
STATE OF OKLAHOMA

Mark Gannon,	Plaintiff,
v.	No. 20,262
W. R. Britton,	Defendant.

SECOND AMENDED ANSWER

Comes now the defendant, W. R. Britton, and for answer to the plaintiff's petition filed herein denies each and every allegation set forth and demands strict proof thereof.

Further answering, defendant alleges and states that the default judgment which was relied upon by the plaintiff in prosecuting this cause was rendered against the defendant by a Court which had no jurisdiction of the person of the defendant or of the subject matter involved for the following reasons, to-wit:

1. The said judgment was taken on account without any evidence to prove the existence or amount of said account.

2. The said judgment is null and void and without force and effect for the reason that jurisdiction was assumed by the Circuit Court of Fayette County, Illinois, as a result of extraneous and extrinsic fraud perpetrated upon the defendant in the following manner, to-wit: That the original petition filed therein on the 27th day of December, 1947, sought a judgment against defendant only upon any interest the defendant might have in a certain FWD truck; that three and one-half years later on February 3, 1951, said petition was amended without notice to the defendant to ask for a money judgment. That the defendant had not hired an attorney to defend this case because the plaintiff, or his agent, had represented to the defendant that no judgment was sought against him, but that the defendant was merely to be a technical party defendant in that cause. Thus lulled into a sense of security by the plaintiff and acting thereon, defendant hired no attorney to represent him in this cause and moved to Ada, Oklahoma. That thereafter, on the 29th day of September, 1951, four years after this suit had been instituted in Vandalia, Illinois, and after the suit had been dismissed as to all other parties, default judgment was taken against the defendant in the sum of $18,000.00 without any notice to defendant; that said cause was coming on for trial. That the defendant was never informed and had no knowledge of the progress or status of this case until the plaintiff, Mark Gannon, filed this present suit in the District Court of Pontotoc County, on the 21st day of February, 1952, nearly five and one-half years after the said suit was filed. That the defendant does not now owe nor has he ever owed any money to the plaintiff, Mark Gannon; that the Circuit Court of Fayette County, Illinois, assumed jurisdiction of this cause because of the preconceived, concerted and fraudulent actions of the plaintiff and his brother, Spike Gannon.

3. That the judgment of $18,000.00 included the sum of $5,000.00 which was not prayed for in either the plain-

tiff's original petition nor in the plaintiff's amended petition and consequently, said judgment was rendered without jurisdiction.

BUSBY, HARRELL AND TRICE
BY: David Busby
Attorneys for Defendant,
W. R. Britton.

ENDORSEMENT THEREON APPEARS:

Filed Feb. 14, 1953, and entered in Book 36 at Page 136.
ABE HOLLOWAY, COURT CLERK,
Pontotoc County, Okla.,
By Faye White, Deputy.

EXHIBIT 9

IN THE DISTRICT COURT WITHIN AND FOR PONTOTOC COUNTY
STATE OF OKLAHOMA

Mark Gannon, Plaintiff

v. No. 20262

W. R. Britton, Defendant

MOTION TO STRIKE

Comes now the plaintiff, Mark Gannon, and moves the Court to strike all of defendant's second amended answer filed herein on the 14th day of February, 1953, except the first three lines thereof constituting a general denial, for the reason that said amended answer consists only of irrelevant and redundant matter and alleges facts which do not constitute any defense to the petition of plaintiff filed herein, and for the further reason that said amended answer sets up as defense only such matters as were set out in defendant's first amended answer; that no new

defenses are contained therein, that the matters set out in said portion of said amended answer have already been ruled on by this Court and stricken for the reason that they do not set out any defense to the cause of action by the plaintiff.

McArthur & Orton
By C. L. McArthur
Attorneys for Plaintiff
Mark Gannon

ENDORSEMENT THEREON APPEARS:

Filed Feb. 19, 1953, and entered in Book 36 at Page 163.
ABE HOLLOWAY, COURT CLERK,
Pontotoc County, Okla.,
By W. D. Abbott, Deputy.

EXHIBIT 10

IN THE DISTRICT COURT WITHIN AND FOR PONTOTOC COUNTY
STATE OF OKLAHOMA

Mark Gannon, Plaintiff,

v. No. 20262

W. R. Britton, Defendant.

ORDER SUSTAINING MOTION TO STRIKE

Comes now this 4th day of March, 1953, this matter coming on to be heard on the motion of Plaintiff to strike all of the Defendant's second amended answer except the first three lines thereof constituting a general denial, the Plaintiff appearing by his attorneys, McArthur and Orton, and the Defendant appearing by his attorneys, Busby, Stanfield, Busby and Deaton, and the court having heard said motion and being fully advised in the premises, finds that said motion should be sustained.

IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED AND DECREED that all of that portion of Defendant's second amended answer except the first three lines thereof constituting a general denial, be, and the same is hereby stricken, to which ruling of the court the defendant excepts and exceptions are by the court allowed, and said cause is set for trial on March 18, 1953, at 10:00 o'clock a.m., 1953.

(Signed) John Boyce McKeel
Judge

O. K. as to form:
Busby, Stanfield, Busby & Deaton
By David Busby

ENDORSEMENTS THEREON APPEAR:

Filed Mar. 5, 1953, and entered in Book 36 at Page 163.
ABE HOLLOWAY, COURT CLERK,
Pontotoc County, Okla.,
By Billye Cozad, Deputy.
RECORDED: Journal 68, at Page 156.

EXHIBIT 11

IN THE DISTRICT COURT OF PONTOTOC COUNTY,
STATE OF OKLAHOMA

Mark Gannon, Plaintiff,

v. No. 20,262

W. R. Britton, Defendant.

TRANSCRIPT OF TESTIMONY AND PROCEEDINGS AT TRIAL

The above styled and numbered cause of action came on for trial before the Honorable John Boyce McKeel, District Judge, on May 4, 1953, and the following testimony was adduced and proceedings had, as follows, to-wit:

APPEARANCES: The Plaintiff being represented by his Attorneys, McArthur & Orton, of Ada, Oklahoma, by C. L. McArthur, a Member of said Firm.

The Defendant, W. R. Britton, appearing in person, and being represented by his attorneys, Busby, Stanfield, Busby & Deaton, of Ada, Oklahoma, by David Busby and W. V. Stanfield, Members of said Firm.

Perry L. Northcutt, ... Reporter

By Mr. McArthur: If the Court please, I believe there is an order showing that this case is set for the Fifth and I believe that the record should show that it is advanced and reset for today for trial.

By the Court: All right, let it so show.

By Mr. Busby: For the purpose of the record. Comes now, the Defendant, and suggests to the Court that the defendant in this case has plead for his defense that fraud was perpetrated by the Plaintiff in obtaining the foreign judgment in question. And that the defense of fraud is a proper defense under the Oklahoma Statutes and decisions, and since it is a proper defense the defendant is entitled to a jury trial to pass upon the question of fraud. The defendant, therefore, moves that this case be stricken from the non-jury docket and set on the jury docket.

By the Court: Well, under what I think is the law—I may be all "Wet" about this matter, but from the way we have been proceeding and I have changed my mind about it, I think I will have to overrule you.

By Mr. Busby: To which ruling of the Court the defendant excepts.

By the Court: Exceptions allowed.

By Mr. Busby: Does the Court make a ruling that the Court will not permit the defendant to a trial by a jury upon the issue of fraud? The Defendant suggests to the Court, and moves the Court, that a jury be called and permitted to sit in connection with this cause and permitted to hear all the testimony of the defendant's purported defense of fraud, and that the jury be permitted to act in an advisory capacity to the Court, so that the Court will indirectly, at least, have the benefit of the jury as to, whether or not, the defendant has sustained the allegations of fraud as plead in his answer.

By the Court: Well, that will be overruled.

By Mr. Busby: Exception.

By the Court: My understanding of the issues here is that the only defense that you have is as to jurisdiction.

By Mr. Busby: Yes, sir, that is what the Court—

By the Court: Of course, that has already been argued out on the motion.

By Mr. Busby: Well, yes, sir, it has been, and we intend to make a record here.

By the Court: Yes, sir. I don't want to keep you from making a record. All right, I am ready.

By Mr. McArthur: If the court please, we wish to introduce into evidence the authenticated copy of the judgment—the original authenticated copy that is attached to the petition filed herein—As Exhibit "A", which shows the judgment taken by him in the Circuit Court of Fayette County, Illinois, on the twenty-ninth of September, 1951;

and which is properly authenticated by the Clerk of that Court and by the Judge of that circuit. We now offer that in evidence as the Plaintiff's Exhibit One.

By Mr. Busby: We object to the introduction of this into evidence on the grounds that, under the Court's ruling, we will not be permitted to rebut the evidence submitted by the plaintiff.

By the Court: Overruled, let it be admitted.

By Mr. Busby: Exception.

Reporter's Note: Which said Plaintiff's Exhibit One is hereinafter copied in full and incorporated herein and made a part of the record hereof and may be found beginning at Page 10 of this Case-made.

By Mr. McArthur: We offer further, an authenticated copy of the Original Complaint in Equity, filed therein, as our Exhibit Two.

By the Court: Any objections?

By Mr. Busby: Yes, sir, we object to it for the same reasons as stated before.

By the Court: All right, overruled.

By Mr. Busby: Exception.

Reporter's Note: Which said Plaintiff's Exhibit Two is hereinafter copied in full, incorporated herein and made a part of the record hereof and may be found copied herein beginning at Page 81 of this Case-made.

By Mr. McArthur: Now, if the Court please, I also wish to offer in evidence authenticated copies of proceedings in the Circuit Court of Fayette County, Illinois, in an action Numbered 47-1052, being the alias request for Summons; Circuit Court Summons and return thereon; Affidavit

as to Military Service; Motion for Leave to File Amended Complaint; Affidavit of Mailing, copy of the notice thereof, and the Notice; the Amended Complaint—

By Mr. Busby: Haven't you got that over here, Mr. McArthur?

By Mr. McArthur: No, that is the original Complaint.

By Mr. Busby: I see.

By Mr. McArthur: —with the exhibits thereto; and the authentication thereof by the Clerk of the Circuit Court of Fayette County, Illinois, and of the Judge of said circuit, as the Plaintiff's Exhibit Three.

By the Court: All right, let it be admitted.

Reporter's Note: Which said Plaintiff's Exhibit Three is hereinafter copied in full, incorporated herein and made a part of the record hereof and may be found copied herein in full beginning at Page 109 of this Case-made.

By Mr. McArthur: The Plaintiff Rests.

By Mr. Busby: We object to the introduction of such testimony and take exceptions to the admission thereof for the reasons stated above.

By the Court: All right, objection is overruled.

By Mr. Busby: Exception.

By the Court: Exceptions allowed.

By Mr. Busby: Comes now the defendant and demurs to the evidence as presented by the Plaintiff as it is insufficient and is not responsive to the Answer filed by the Defendant.

By the Court: Overruled.

By Mr. Busby: Exception.

By Mr. Busby: Now, I would like to call Mr. W. R. Britton.

By the Court: All right.

W. R. BRITTON,

the Defendant herein, after having been first duly sworn, upon oath, to tell the truth, the whole truth and nothing but the truth, thereupon took the witness stand to testify in his own behalf and testified, as follows, to-wit:

Direct Examination

By Mr. Busby:

Q. Will you tell the Court your name and address, please?

A. W. R. Britton; I live on the Allen road, a mile east of town.

Q. What is your business, Mr. Britton?

A. Oil business.

By Mr. Busby: Now, I have a series of questions here to ask Mr. Britton and the indications are that Mr. McArthur will object to these questions, and we will handle it however the Court wants to. If the Court wishes, I will dictate what I expect the witness to say in the record—

By the Court: Well, of course, heretofore I have already heard the question of jurisdiction on previous motions.

By Mr. Busby: Yes, sir.

By the Court: And the court's idea was at that time that the only grounds that the Decree in Illinois could be set aside would be on jurisdictional

grounds, but I don't want to do anything to keep you from making your record, and so you ask him questions. And, Mr. Britton, if you will hesitate a little bit after he asks the question so as to give them a chance to object to it, I think we can make your record that way.

By Mr. Busby: Yes, sir.

By the Witness: Yes, sir.

Q. Did you, on or about the tenth day of July, 1946, have a business transaction with one, W. R. or "Spike" Gannon?

By Mr. McArthur: We object to that, if the Court please, as incompetent, irrelevant and immaterial; the transaction having been reduced to judgment and the authenticated judgment having been introduced here in this case.

By the Court: Overruled, he can answer that.

By Mr. McArthur: Exception.

A. Yes.

Q. Describe that transaction, Mr. Britton?

By Mr. McArthur: Now, we object to that, if the Court please, as an attempt to go into the transactions which led up to the Judgment.

By the Court: I think so, and the objection will be sustained, unless you have some evidence towards the jurisdiction of that court up there—in other words, it is my idea and my understanding of the law, that the only thing that you can go into here would be the jurisdiction of the court up there. That your proper remedy would be to go back to Illinois.

By Mr. Stanfield: We understand the Court's position but we want it for the purpose of the record.

By the Court: You want to make your record—All right.

By Mr. Stanfield: The objection was sustained, and to which the defendant excepts, and now you expect his answer to be: Now, dictate it (Directed to Mr. Busby)

By Mr. Busby: The Defendant expects Mr. Britton's answer to be that he had known "Spike" or W. R. Gannon for some time; that Gannon had called him and asked him to come to his, Gannon's, saloon and that Gannon wanted to make a deal which they had talked over the day before. That it was at about 9:30 at night on the tenth day of July, 1946; that Mr. Britton had driven to Rock Island, Illinois and that Gannon—that is, Roy Gannon, had told him that he would buy a third interest in Britton's drilling business. Britton had about sixty-five thousand dollars worth of equipment with about a twenty thousand dollar mortgage on it, and Gannon said he would buy a third interest in Britton's drilling business for fifteen thousand dollars, and that was agreed to. That Mr. Gannon went to his upstairs room or office and got an envelope with small bills in it to about thirteen thousand dollars—there were 10's, 20's and about fifteen hundred one-dollar bills, all cash. Mr. Britton offered to give him a receipt for this money but Mr. Gannon refused to take the receipt. Mr. Gannon told him that he was in trouble with the Federal Bureau of Internal Revenue and that he had made a lot of cash, money, on gambling and a string of slot machines and devices and "Black market", and that he didn't want any cash record, or receipt, of the transaction. He said that he didn't want his name involved as a record owner of the rig and equip-

ment and said that he wanted only to be a silent partner in the business and that was agreeable with Mr. Britton.

Q. Now, Mr. Britton, this cause of action or in this cause of action Mr. Gannon, or, rather, Mr. "Spike" Gannon's brother is seeking to recover eighteen thousand dollars against you, that is five thousand more than he gave you in cash, was there any further agreement?

By Mr. McArthur: We object to that, if the Court please, as an attempt to go into the merits of the case back of the judgment that was rendered by the court in Illinois.

By the Court: Objection sustained.

By Mr. Busby: Exception. And for the purpose of the record, we expect the answer to be that there was a further agreement, that it was agreed that Mr. Gannon was to share one-third of whatever profit the rig made and Mr. Britton was to have two-thirds; that Mr. Britton told him that night, the tenth of July, 1946, that they could probably expect to make about three thousand dollars a well and that in that case about a thousand dollars of it would be Mr. Gannon's if that sum were made. When Mr. Britton reminded him later that he had only given Mr. Britton thirteen thousand dollars instead of the fifteen thousand agreed on, Mr. Gannon said that he would let the profits of the wells apply on the other two thousand dollars until such time as the fifteen thousand was completely paid, before Mr. Gannon started taking any profits. We expect him to testify that actually, from that point on, no profits were made by the drilling company, or partnership; that five wells were drilled and three of them were dry and

the other two weren't much good; that the partnership became unable to pay the installments on the mortgage and the rig and equipment were foreclosed.

Q. Now, Mr. Britton, this case is filed in the name of "Mark Gannon" what is the relationship with Mark Gannon as it refers to this transaction?

By Mr. McArthur: We object to that, if the court please, as an attempt to go behind the judgment which was rendered by the court in Illinois and into the merits of the case.

By the Court: Sustained.

By Mr. Busby: Exception. And if the witness were permitted to testify we expect the witness to state that "Spike" Gannon said that he didn't want his name involved as a record owner of the rig and truck and said that he wanted to be a silent partner in the business; that "Spike" Gannon remained the only silent partner; that about the month of December, 1946—six months after Gannon bought into the partnership—Roy Gannon had Mr. Britton sign a bill of sale placing the one-third interest in his brother's name, that is, in Mark Gannon's name. That "Spike" Gannon had Mr. Britton to place the one-third interest in Mark's name but it was actually for the use and benefit of "Spike" Gannon, and it was understood by both parties that that was the case. That Mark Gannon has never, actually, had any interest in the business, and that Mark Gannon has never been a partner with Mr. Britton.

Q. Now, Mr. Britton, was this bill of sale to Mark Gannon given before or after a mortgage was made on the rig and equipment of the partnership, and explain that situation to the Court?

By Mr. McArthur: We object to that, if the Court please, as an attempt to go behind the judgment and into the merits of the case.

By the Court: Sustained.

By Mr. Busby: Exception. And we expect the answer to be that the bill of sale was made to Mark Gannon after the last mortgage had been made on the rig and that "Spike" Gannon knew the property had been mortgaged, he knew the partnership was in debt. That he had explained this to "Spike" Gannon and that it, also, was a matter of public record in three counties. That the rig was finally sold for the mortgage at auction in January, 1947.

Q. Now, Mr. Britton, when was the next time you heard anything about the rig?

By Mr. McArthur: We object to that, if the Court please, as an attempt to go behind the judgment and into the merits of the case.

By the Court: Sustained.

By Mr. Busby: Exception. And we expect the answer of the witness to be that in November of the next year, that would be 1947, "Spike" Gannon and his attorney came to see Mr. Britton in Tuscola, Illinois, and "Spike" Gannon told Mr. Britton that they might be able to get the truck back, at least, and perhaps, even, the rig; that Gannon—"Spike" Gannon, that is—said that they had gone into court to "Cloud" the title to the equipment and that they could use technicalities to salvage something out of it. "Spike" Gannon told Mr. Britton that he had made Mr. Britton a party to the suit but that insofar as Mr. Britton was concerned it was a friendly suit; that he hadn't sued Mr. Britton for any money and that he was seeking

mainly to get a certain truck back and that Mr. Britton didn't need to worry about any judgment. That Mr. Gannon told Mr. Britton that he wanted Britton to "play ball with him" in helping Gannon to get the rig or truck back; that Mr. Britton told Mr. Gannon that it looked like that they had just gambled and lost and that the foreclosure was good but that anything that Britton could do to help him, without saying anything that wasn't true, he certainly would be glad to do it; that Britton further told him that he was going to Oklahoma and forget the whole matter but for Gannon to call on Britton if he needed help. Gannon stated that he wouldn't need Britton's help and that he would take care of Britton's interest and Britton need not to worry about the lawsuit because Britton was only a technical party to it. After this, Mr. Britton would be expected to testify that he came on back to Oklahoma and heard no more about it.

Q. Were you served with a summons in the suit above referred to?

By Mr. McArthur: No objection.

A. Yes.

Q. When were you served with that summons, Mr. Britton?

A. I don't remember what day.

Q. Was it the day you met him there in Tuscola and he told you not to worry?

A. Yes—it was that morning and I met him that afternon, but I don't know what day that was.

Q. Did you cooperate with him that day by giving him a sworn statement relative to the mortgage and matters?

A. Yes.

Q. What notice were you thereafter served with concerning the status of the case, Mr. Britton?

By Mr. McArthur: We object to that as incompetent, irrelevant and immaterial.

By the Court: Overruled.

By Mr. McArthur: Exception.

Q. What notice were you thereafter served with—any?

A. None.

Q. When did you first know anything about the status of this case, Mr. Britton?

By Mr. McArthur: We object to that, if the Court please, the judgment speaks for itself and it is an attempt to go behind that judgment.

By the Court: That will be sustained.

By Mr. Busby: To which the defendant excepts and expects the answer to be that Mr. Britton didn't hear a thing about the case until the twenty-first day of February, 1952, when this case was filed here in Ada, Oklahoma—more than five years after the interview with "Spike" Gannon above referred to.

Q. Did you receive any notice that the petition had been changed claiming that you owed Mark Gannon money?

By Mr. McArthur: We object to that, if the Court please, as incompetent, irrelevant and immaterial, and an attempt to go behind the judgment in the case—the judgment, on its face, shows that the court had jurisdiction.

By the Court: Sustained.

By Mr. Busby: To which the Defendant excepts and expects the answer to be that he received no notice that the petition had been changed.

Q. Did you hire a lawyer in Illinois to protect your interest in that suit up there?

By Mr. McArthur: We object to that as incompetent, irrelevant and immaterial; he was served with summons.

By the Court: Sustained.

By Mr. Busby: To which the defendant excepts, and expects the answer to be that he hired no lawyer in Illinois because "Spike" Gannon had said that he, Britton, wouldn't need a lawyer and told Britton that his own lawyer, that is, Gannon's own lawyer would take care of Mr. Britton; that he told Mr. Britton to forget about the case; that Mr. Britton had on several occasions used various lawyers in Illinois in connection with his business and that he would have gone to a lawyer in connection with the matter had it not been for the representations of "Spike" Gannon that there would be no judgment taken against him personally.

Q. How much equity did you have in your rig and equipment up there?

By Mr. McArthur: We object to that, if the Court please, as incompetent, irrelevant and immaterial.

By the Court: Sustained.

By Mr. Busby: Note our exceptions. And we expect the answer to be that the rig and equipment was worth about sixty-five thousand dollars; that there was a twenty-thousand-dollar mortgage on

the equipment at the time the deal was made with "Spike" Gannon; that fifteen thousand dollars represented a fair one-third part of the equity which Mr. Britton had in the rig.

Q. What has been the status of this partnership, the financial status of this partnership, since the rig was—or, rather, since the deal was made with Mr. Gannon?

By Mr. McArthur: We object to that, if the Court please, as incompetent, irrelevant and immaterial, and an attempt to go into the merits of the case and behind the judgment.

By the Court: Sustained.

By Mr. Busby: To which the defendant excepts and expects the answer to be that the partnership went completely broke, that it owed debts other than the mortgage which was on the equipment previous to the deal—now, let's get that straight. That it incurred debts after the partnership was formed, in addition to the mortgage debt of twenty thousand dollars which was already on it when the partnership was formed; that debts were incurred with several oil field supply houses; that debts were owed to the National Supply Company of Toledo, Ohio of nearly eight thousand dollars; and to the Franks Manufacturing Company of Tulsa, Oklahoma, of about eight thousand dollars, and about forty thousand dollars in all. That Mr. Britton has personally made most of these debts good, that is, he has paid them off, except for a few thousand dollars which the partnership still owes, and that Mr. Gannon has not paid any of this amount.

Q. Have you seen or talked to "Spike" Gannon since this suit was instituted in Illinois?

By Mr. McArthur: We object to that, if the Court please, as incompetent, irrelevant and immaterial; it couldn't serve for any purpose except an attempt to go behind the judgment.

By the Court: Sustained.

By Mr. Busby: To which the defendant excepts and expects the answer to be that Mr. Britton saw "Spike" Gannon in Rock Island, Illinois, at the Armstrong Hotel in the summer of 1951, three or four months before this judgment was taken in Illinois, and that Mr. Gannon told Mr. Britton that he had nothing to worry about in the lawsuit.

Q. Did Mr. Gannon ever communicate with you regarding the judgment in Illinois at any time—strike that. Did Mr. Gannon ever communicate with you regarding this case from the time it was first filed in Illinios to the time that you were served with a petition in this county—or, rather—with a summons in this county, seeking to collect the Illinois judgment?

By Mr. McArthur: We object to that as incompetent, irrelevant and immaterial; it couldn't affect the judgment taken in Illinois.

By the Court: Sustained.

By Mr. Busby: To which the defendant excepts and expects the answer to be that neither "Spike" Gannon nor his brother, Mark, at any time ever communicated with him by mail or otherwise regarding this judgment from the time it was first filed in Illinois until the time the summons was issued in Pontotoc County, except as referred to in the last question and answer.

Q. Mr. Britton, did you ever have any contact or make any contract with the plaintiff in this suit,

Mark Gannon? Did you ever have any contact or make any contract with the plaintiff in this suit, Mark Gannon?

By Mr. McArthur: We object to that as incompetent, irrelevant and immaterial, and is an attempt to go behind the judgment.

By the Court: Sustained.

By Mr. Busby: To which the defendant excepts and states that he expects the answer to be that Mr. Britton never had any contact with, or contract with, or financial dealings with, Mark Gannon, the plaintiff in this case. That is all.

By the Court: Do you have any questions?

By Mr. McArthur: No.

By the Court: that is all, Mr. Britton.

Witness excused.

By Mr. McArthur: For the purpose of the defendant making such record as he wants, I will state that I have the original statement that he referred to, and also transcript of the testimony taken at the trial. I do not think that they are relevant or material under the pleadings in this case but if the defendant wishes to use it to make his record and offer I will let him use these that I have.

MARGARET CAROL REAGAN BRITTON,

after having been first duly sworn, upon oath, to tell the truth, the whole truth and nothing but the truth, was the next witness produced on behalf of the Defendant, and testified as follows, to-wit:

Direct Examination

By Mr. Busby:

Q. Would you state your name and address?

A. Margaret Carol Reagan Britton.

Q. Where do you live, Mrs. Britton?

A. I live on the Allen Highway, about a mile east of town.

Q. Are you the wife of W. R. Britton?

A. Yes, sir.

Q. Were you connected with the Britton Drilling Company during the period in which this cause of action arose first?

By Mr. McArthur: We object to that, if the Court please, as incompetent, irrelevant and immaterial, and could only serve the purpose of going back of the judgment rendered in the Illinois court.

By the Court: What was that question—was the question: Whether or not she was connected with the W. R. Britton Drilling Company?

By Mr. Busby: Yes, sir.

By the Court: Objection overruled.

By Mr. McArthur: Exception.

A. Why, yes, sir, I was bookkeeper for them.

Q. Now, Mrs. Brutton, would you tell us the relationship between your husband and "Spike" Gannon, and, if you can, between your husband and Mark Gannon, the Plaintiff in this case, as relates to their business affairs?

By Mr. McArthur: We object to that, if the Court please, as incompetent, irrelevant and immaterial, and an attempt to go behind the judgment rendered in the Illinois court.

By the Court: Objection sustained.

By Mr. Busby: To which the defendant excepts, and we expect the answer to be that she worked closely with the affairs of the partnership and as an employe thereof regularly paid and that she knew that "Spike" Gannon had bought a one-third interest in the partnership and that the books were set up to reflect this; that on the seventeenth day of November, 1947 she was with her husband at Tuscola, Illinois, in connection with her employment as bookkeeper, that Mr. Gannon, that is, "Spike" Gannon, and his attorney came to see Mr. Britton and herself and that Mr. Gannon said that he had figured out a way to get around the foreclosure of the partnership rig and truck and that he could recover something out of it for himself, at least, and that he had tied up the rig with a suit against the mortgage company; that he told them that Britton had been made a defendant in the suit but that he need not worry about it because it was a friendly suit insofar as he was concerned, and that Britton was only a technical party to the suit; that the Brittons could forget about the suit. That Mr. Britton told Gannon he would help him all he could but that he wouldn't lie for him. That Gannon told Mr. Britton that the truck had been described wrong in the mortgage and that he, Gannon, could get the truck back, anyway, he thought.

Q. Now, after the foreclosure what was the financial status of you and your husband, Mrs. Britton?

By Mr. McArthur: We object to that as incompetent, irrelevant and immaterial.

By the Court: Sustained.

By Mr. Busby: To which the defendant excepts and expects the answer to be that as bookkeeper she can report that they were completely broke, didn't have any money at all—owed many debts in addition to the mortgage on the rig, in approximately the sum of forty thousand dollars; that most of that has been paid. That most of the partnership debts incurred after Mr. Gannon came into the partnership have been paid. These amounts have been paid personally by Britton and that Mr. Gannon has paid nothing on them, and that her books will reflect this.

Q. Now, during the time that you were keeping the books, Mrs. Britton, did Mark Gannon ever make any investigation or inquiry as to the progress of the business?

By Mr. McArthur: We object to that as incompetent, irrelevant and immaterial; and an attempt to go behind the judgment.

By the Court: Sustained.

By Mr. Busby: To which the defendant excepts and expects the answer to be that Mark Gannon never had anything to do with the business, never made any inquiry of her as bookkeeper of the business and that he made no inquiry as to the progress of the business.

Q. Did "Spike" Gannon ever make any investigation or inquiry as to the progress of the business?

By Mr. McArthur: Same objection, if the court please.

By the Court: Sustained.

By Mr. Busby: To which the defendant excepts and expects the answer to be that "Spike" Gannon kept up closely with the business, made inquiry about the business on several occasions, that the

books were open to him at all times and that he did take advantage of this and checked the books for himself during the fall of 1946 and during the time when they were drilling the wells and operating the equipment.

Q. After you returned to Pontotoc County has Mark Gannon ever appeared here and talked to you about any matter?

By Mr. McArthur: We object to that as incompetent, irrelevant and immaterial.

By the Court: Sustained.

By Mr. Busby: To which the defendant excepts and expects the answer to be that Mark Gannon, insofar as Mrs. Britton knows, has never been in Pontotoc County or shown any concern as to whether or not this judgment is collected.

Q. Since your return to Pontotoc County has "Spike" Gannon ever come to this county or shown any interest in this matter?

By Mr. McArthur: We object to that for the same reason.

By the Court: Sustained.

By Mr. Busby: To which the defendant excepts and expects the answer to be that just prior to the filing of summons in this case—in this particular action in Pontotoc County—that Mr. "Spike" or Roy Gannon, did come to Pontotoc County and did come to the home of Mrs. Britton while Mr. Britton was away; that he inquired about the financial condition and debts of the old partnership as well as *as* to the financial condition of Mr. Britton at the present time; that he was accompanied by his lawyer but not by his brother,

who is the plaintiff in this case; that he gave no indication that any action was to be filed in this county or that indeed a judgment had been rendered against Mr. Britton in Illinois, nor did he make any demand for any payment whatsoever for any matter whatsoever. That is all. Do you wish to ask her any questions?

By Mr. McArthur: No.

By Mr. Busby: All right. At this time the defendant wishes to introduce into testimony those portions of this transcript of the record in case number 47-1052 in the Circuit Court of Fayette County, Illinois—those portions which the Plaintiff has not already introduced. In other words, your Honor, some of this—

By the Court: The same as he introduced?

By Mr. Busby: Yes, the same as he introduced, but I don't want to overburden the record, however, I would like to introduce all that he has not introduced—I would like to put this whole thing in the record.

By Mr. McArthur: May I inquire, does that include the testimony that was taken at the trial in Illinois?

By Mr. Busby: I don't know of any testimony that was taken at the trial in Illinois. In fact, we maintain that there wasn't any taken. It is properly certified, just as your exhibits were that you introduced at the beginning of this case, Mr. McArthur.

By Mr. McArthur: We wish to object to it for the reason that there is nothing material in that record that has not already been introduced, if the court please.

By the Court: Well, I don't want to make a big record here. It is going to be to your detriment to make a big record but I don't want to keep you from putting anything in there that you think will help you, if it is competent. The objection will be overruled, I am going to let him put it in.

By Mr. McArthur: All right, exception.

By Mr. Busby: All right, we rest:

By Mr. McArthur: Do I understand, then, that the defendant does not wish to offer the original statement of Mr. Britton to go into the record and the certified testimony that was taken at the trial?

By Mr. Stanfield: We don't want that to go in there. We have a letter from the Clerk stating that there wasn't any taken.

By Mr. Busby: We maintain that there was no evidence taken.

By Mr. McArthur: Well—

By Mr. Busby: If you wish to open up that avenue, Mr. McArthur—

By Mr. McArthur: No; I was just making it available to you if you want it—it is certified to by the court reporter.

By Mr. Stanfield: We also have a statement by the Clerk before that—

By Mr. McArthur: If there is no further testimony, then,—I don't know whether the court wants to hear any argument on it, or not.

By the Court: Do both of you close?

By Mr. Busby: Yes, sir.

By Mr. McArthur: Yes, sir.

[APPENDIX]

(Thereupon argument of counsel is heard and the cause is thereupon submitted to the court for decision)

By the Court: It is the opinion of the Court that the only way that this judgment could be set aside would be by affecting the jurisdiction of the court in Illinois. And the proper place to plead fraud would be in the State of Illinois, in that court up there, and that is what it looks like from the evidence here that you are basing it on. So, judgment for the plaintiff—

By Mr. Stanfield: To which the defendant excepts.

By the Court: Judgment for the Plaintiff in the amount prayed for. Eighteen thousand dollars, is that what you are praying for?

By Mr. McArthur: Yes, sir, and some interest, I believe.

By the Court: Judgment for the Plaintiff for the amount prayed for.

By Mr. Stanfield: To which the defendant excepts.

EXHIBIT 12

STATE OF ILLINOIS)
: SS. IN THE CIRCUIT COURT
COUNTY OF FAYETTE)

MARK GANNON, Plaintiff,)
)
v.)
)
THOMAS S. DORAN, W. R. BRITTON d/b/a, W. R. BRITTON DRILLING COMPANY, and FIRST NATIONAL BANK OF VANDALIA, Defendants.)

Complaint in Equity for Injunction, Partition, Redemption and Other Relief.

Plaintiff, Mark Gannon, by Charles R. Myers, his Attorney, complaining of the Defendants, Thomas S. Doran, W. R. Britton, d/b/a W. R. Britton Drilling Company, and First National Bank of Vandalia, says:

1. That Plaintiff is now and has been for many years last past been a resident of the County of Rock Island, in the State of Illinois.

2. That on or about the 10th day of September, 1946, the Defendant, W. R. Britton was the owner of a Franks Portable, fully equipped drilling rig, Model Number 4000-L, including 2 Diesel Motors, One Waukesha Motor, Koehler Light Plant, together with two strings of drilling tools, one-3" and one-4½", together with one FWD Truck, bearing Factory Number 7312, Model Number 27711, Engine Number 41873, together with all equipment and accessories had and used in connection with the above drilling equipment.

3. That on or about the above date in the County of Rock Island, the Plaintiff purchased an undivided one-third (1/3) interest in and to the above described truck

and drilling equipment from the said W. R. Britton for the sum of Twenty-Two Thousand, Five Hundred Dollars ($22,500.00), which said sum was then and there paid, to the Defendant, W. R. Britton.

4. That the said Drilling equipment was then and there being used to drill oil and gas wells in the County of Shelby and other places in the State of Illinois, and that said equipment so purchased was situated at a great distance from the home of the Plaintiff and place of purchase, and was of bulky and ponderous nature, weighing approximately 60,000 pounds.

5. That at the time of said purchase by the Plaintiff, it was agreed between the Plaintiff and Defendant, W. R. Britton, who was then and there engaged in the business of drilling wells for the recovery of oil or gas, that the said W. R. Britton would continue to use said drilling equipment for that purpose and would pay to the plaintiff as his share of the profit derived from the use of said drilling equipment, the sum of One Thousand Dollars ($1,000.00) for each well drilled.

6. That the Defendant from time to time thereafter drilled certain wells for the recovery of oil and gas in the counties of Shelby and other counties in the State of Illinois, and did then and there in the County of Rock Island, State of Illinois, in the month of December, 1946, report to the Plaintiff that he had some money for him as his share of the proceeds derived from the use of said oil well drilling equipment, and then and there promised to send the sum of Four Thousand Dollars ($4,000.00), to the Plaintiff within a few days; that at the time the Plaintiff requested the Defendant to give him some writing to evidence the ownership of said oil well drilling equipment, whereupon, Plaintiff and Defendant went to the office of a lawyer in Davenport, Iowa, on the 12th day of December, 1946, at which time and place the Defendant,

W. R. Britton, made, executed and delivered to the Plaintiff a Bill of Sale as evidence of his ownership of an undivided one-third (1/3) interest in and to said oil well drilling equipment and all equipment and accessories had and used in connection therewith, which said property is more particularly described in copy of said Bill of Sale attached hereto, as Exhibit "A".

7. That at the time of the purchase of said undivided interest in and to said goods and chattels, the Defendant, W. R. Britton represented the value of said property to be in excess of Sixty-Five Thousand Dollars ($65,000.00), and that at said time, and also at the time of the execution and delivery of the aforementioned Bill of Sale, said Defendant warranted that he was the owner thereof and that said property was free and clear of all liens, claims or encumbrances of any kind or character.

8. That notwithstanding the Defendant, W. R. Britton's representations, that it appears from the records of the Recorder of the County of Fayette, in the State of Illinois, that the Defendant purported to mortgage certain oil well drilling equipment to General Finance Corporation, a corporation, part of which equipment may have been purchased by the Plaintiff from the Defendant, W. R. Britton, as aforesaid; that said purported mortgage appears of record as Mortgage Instrument "K", Number 421, in the office of said Recorder of Fayette County, Illinois, and copy of which is hereto attached, as Exhibit "B".

9. Said chattel mortgage did not purport to mortgage the FWD Truck herein described.

10. Plaintiff is informed and believes that in the month of January, 1947, General Finance Corporation, a corporation, attempted to foreclose the aforesaid purported mortgage, and Plaintiff is informed and believes that said foreclosure sale was irregular, and did not conform to the Statutes of the State of Illinois, pertaining to the foreclos-

ure of chattel mortgages and the sale of property thereunder.

11. That Plaintiff is informed and believes that at said foreclosure sale that the Defendant Thomas S. Doran, attempted to purchase the equipment covered by said purported mortgage for the sum of Sixteen Thousand Dollars ($16,000.00), the exact amount of which is not known to the Plaintiff.

12. The Plaintiff did not learn of the existence of said purported mortgage, nor of the attempted foreclosure sale of the property covered thereby until approximately one week after the date of said attempted foreclosure sale and that immediately upon being informed thereof, he, the Plaintiff by and through his agents and attorneys came to the City of Vandalia, Illinois, to investigate the circumstances of said attempted foreclosure and purported purchase by the Defendant, Thomas S. Doran, and at that time and place the Plaintiff offered to redeem from said attempted foreclosure sale by payment to the said Defendant, Thamas S. Doran, the amount of money which he, the said Defendant, had paid to the General Finance Corporation, a corporation, at the purported foreclosure sale; and also offered at said time and place to convey his, the Plaintiff's interest in said oil well drilling equipment to the Defendant, Thomas S. Doran, for Twenty-Two Thousand Five Hundred Dollars, ($22,500.00).

13. That subsequent to said offer on the part of the Plaintiff that negotiations were pending between the Plaintiff and Defendant for a period of several months subsequent thereto, and that the Defendant through his agent and attorneys, conveyed the information to the Plaintiff on August 2, 1947 that the Defendant refused to accept the offer to redeem or to pay any moneys to the Plaintiff for his interest in said equipment and information to the effect that the Defendant intended to keep and retain all of said equipment as his own property.

14. That after notice to the Defendant, Thomas S. Doran, of the claim and interest in said oil well drilling equipment by the plaintiff and the repeated offer of the Plaintiff to redeem from said sale by repaying to the Defendant, Thomas S. Doran, the amount of money expended by him for the alleged purchase of said equipment, the said Defendant did, on June 11, 1947, purport to mortgage said property to the First National Bank of Vandalia, through its agents and attorneys, having actual knowledge of the claim of interest by the Plaintiff, and his offer to redeem from said sale, by reason whereof, the First National Bank of Vandalia is made a party defendant hereto.

15. That notwithstanding the fact that General Finance Corporation, a corporation, did not purport to have a mortgage on a certain FWD Truck, bearing Factory No. 7312, Model No. 27711, Engine No. 41873, Plaintiff is informed and believes that the Defendant, Thomas S. Doran claims to own or to have purchased said truck from General Finance Corporation, a corporation, at their attempted foreclosure sale described herein, and said Defendant has under date of August 29, 1947, filed a proceeding in the Circuit Court of Fayette County, Illinois, entitled "Thomas Doran, Plaintiff, v. Edward J. Barrett, Secretary of State, of the State of Illinois", being Cause No. 47-32 in which said suit the Plaintiff prays an order of the Circuit Court decreeing and finding him, the said Thomas doran, to be the owner of said motor vehicle, and praying for an order that the Defendant, Edward J. Barrett, Secretary of the State of Illinois, be compelled to issue to the said Thomas Doran, certificate of title to evidence his ownership of said motor vehicle; copy of which complaint is hereto attached as "Exhibit C".

16. That Plaintiff is informed and believes that said cause in the Circuit Court of Fayette County, being numbered 47-32, has been set for hearing, or will be set for hearing at an early date, and that if said cause is called

for trial without the intervention of this Court that irreparable damage may result to this Plaintiff.

17. Plaintiff is informed and believes that the said oil well drilling equipment herein described is of a value of at least Sixty Thousand Dollars ($60,000.00), and was of such value at the time of the attempted foreclosure sale by General Finance Corporation, a corporation, and purchased by the Defendant, Thomas S. Doran, and that Plaintiff is further informed and believes that the Defendant, Thomas S. Doran paid to General Finance Corporation, a corporation, at said purported foreclosure sale the sum of approximately Sixteen Thousand Dollars ($16,000.00), which said sum is totally and wholly not commensurate with the true value of said property all of which the Defendant, Thomas S. Doran, then and there well knew.

18. That notwithstanding the fact that Plaintiff has made repeated offers to redeem the oil well drilling equipment herein described from said alleged foreclosure sale by payment to the Defendant, Thomas S. Doran of the moneys expended by him and paid to General Finance Corporation, a corporation, and the repeated refusal of the said Defendant to accept the same, that the Plaintiff nevertheless is still willing, and is able to pay, and does now offer to redeem from said alleged foreclosure sale, by payment to the said Thomas S. Doran of any and all moneys paid by him to the said General Finance Corporation, a corporation.

19. That Plaintiff is without adequate remedy in the premises except in a Court of equity.

WHEREFORE, Plaintiff prays:

a. That an account may be taken of what is due to the Defendant, Thomas S. Doran, for the amount expended by him to General Finance Corporation, a corporation, at the purported foreclosure sale and upon payment thereof

by the Plaintiff to the Defendant, Thomas S. Doran, which the Plaintiff hereby offers to pay, that the said Defendant may be decreed to deliver over to the Plaintiff the oil well drilling equipment and truck as heretofore described and that the Plaintiff may by decree of this Court, be permitted to redeem said property from said alleged or purported foreclosure sale.

b. Or that in the alternative, a partition and division of the oil well drilling equipment and FWD Truck herein described be made to the respective parties according to their rights and interests as they may appear to this Court.

c. That an accounting may be had between the Plaintiff and Defendant, W. R. Britton, by reason of the premises herein alleged and that upon said accounting that the Plaintiff may be declared by decree of this Court to have a lien upon any interest of the Defendant, W. R. Britton, in the FWD Truck described herein.

d. That Defendant, Thomas S. Doran, may be restrained by the order and injunction of this Court from prosecuting cause entitled "Thomas Doran, Plaintiff v. Edward J. Barrett, Secretary of State of the State of Illinois," being case numbered 47-32 in the Circuit Court of Fayette County, Illinois, and further until the final determination of this cause; and further that the Defendant, Thomas S. Doran may be restrained and enjoined from selling, assigning, or otherwise encumbering any of the oil well drilling equipment and FWD Truck herein described, until the further order of this Court.

e. That the Plaintiff may have such other and further relief in the premises as the Court may deem meet.

MARK GANNON
By Charles R. Myers,
Attorney—
Vandalia, Ill.

STATE OF ILLINOIS)
: SS.
COUNTY OF FAYETTE)

Mark Gannon, being first duly sworn upon oath states that he has read the above and foregoing complaint and knows the contents thereof and that the same is true of his own knowledge, except that as to the matters as are therein stated to be on his information and belief and that as to those matters, he believes it to be true.

Mark M. Gannon,

Subscribed and sworn to before me this 26th day of September, 1947.

Marie Bennett,
Notary Public.

(SEAL)

EXHIBIT 13

[NOTE: This Exhibit 13 is a copy of the Exhibit 3 introduced in evidence by plaintiff in the District Court of Pontotoc County, Oklahoma, except that we are omitting here the affidavit as to military service referred to, and Exhibit B to the amended complaint, as same are not pertinent to any issue now involved.]

REQUEST FOR ALIAS SUMMONS—Civil Practice Act.

STATE OF ILLINOIS,
ss. Circuit Court
County of Fayette

MARK GANNON PLAINTIFF
v. CIVIL ACTION 47-1052
THOMAS S. DORAN ET AL Defendants

The Clerk of said Court is hereby requested to issue a summons in the above entitled cause, directed to the said defendants to file answer or otherwise make appearance in said Court on or before the 3rd Monday in the month of Dec. 1947 and deliver the said summons to the Sheriff of said County for service and return thereon.

Dated this 15th day of November, 1947.

Charles R. Meyers,
Plaintiffs' Attorney.

To Paul Houck Clerk
ENDORSED:

No. 47-1052

REQUEST FOR SUMMONS
Fayette COUNTY
Circuit Court

Mark Gannon — Plaintiffs
v.
Thomas S. Doran et al — Defendants

FILED
NOV. 15, 1947
Paul Houck,
Clerk of the Circuit Court
Fayette County, Illinois.

ALIAS CIRCUIT COURT SUMMONS

STATE OF ILLINOIS,
ss.
Fayette County

In the name of the People of the State of Illinois, in the Circuit Court of Fayette County, Illinois.

MARK GANNON, Plaintiffs,

v. No. 47-1052

THOMAS S. DORAN, W. R. BRITTON d/b/a W. R. BRITTON DRILLING COMPANY, and FIRST NATIONAL BANK of Vandalia, Defendants.

To the above named defendants:

You are hereby summoned to answer the complaint in the above entitled cause.

Take notice that you must file your answer or otherwise make your appearance in said court held in the court house in the city of Vandalia, Illinois, on or before Monday, December 15, 1947, provided this writ shall be served (Month) (Day) upon you not less than 20 days prior to said date, but if this writ shall be served upon you less than 20 days before said date, and is served 20 days before Monday, January 5, 1948, you shall file your answer or otherwise make your appearance on said last mentioned date.

If you do not appear according to the command of this writ, plaintiff may take judgment against you by default.

This summons must be returned by the officer or other person to whom it was given for service, with indorsement thereon with services and fees, if any, not later than 5 days after service thereof and in no event later than the date first above named.

WITNESS, PAUL HOUCK, Clerk of said Court and the Seal thereof, at Vandalia, Illinois, this 15th day of November, 1947.

Paul Houck, Clerk

(SEAL)
Plaintiff's Attorney—and Address.
CHARLES R. MYERS
VANDALIA, ILL.

To the Sheriff of Fayette County, to Execute:

STATE OF ILLINOIS
ss.
DOUGLAS COUNTY

I have duly served the within by reading the same to the within named W. R. Britton and at the same time leaving with each of them a true copy thereof, this 17th day of November, 1947.

Vaughn W. Pelcher, Sheriff
By Fred E. Parker, Jr.,
Deputy.

Endorsed:

General No. 47-1052

SUMMONS
(IN CHANCERY)
FAYETTE COUNTY CIRCUIT COURT

MARK GANNON Plaintiffs,
v.
THOMAS S. DORAN ET AL
Defendants.

SHERIFF'S FEES FOR SERVICE

Service	$2.00
____ Miles traveled	$ .20
Return	$1.00
Total	$3.20

Received this fee of $3.20
Nov 17 1947.

VAUGHN W. PELCHER
Sheriff

By Fred E. Parker, Jr.,
Deputy.

FILED
JAN 6 1948
Paul Houck,
Clerk of the Circuit Court
Fayette County, Illinois.
PAUL HOUCK
VANDALIA, ILL.

STATE OF ILLINOIS)
: SS. IN THE CIRCUIT COURT
COUNTY OF FAYETTE)

MARK GANNON, Plaintiff,)
v.)
THOMAS S. DORAN, W. R. BRITTON d/b/a W. R. BRITTON DRILLING COMPANY and FIRST NATIONAL BANK of VANDALIA, Defendants.) Complaint in Equity for Injunction, Partition, Redemption, and other relief.

No. 47-1052

MOTION

Now comes Charles R. Myers, Attorney for Plaintiff in the above entitled cause, and moves the Court for leave to file instanter an amended complaint and to make General Finance Corporation, a corporation, party-defendant.

Charles R. Myers

ENDORSED:

No. 47-1052

STATE OF ILLINOIS FAYETTE COUNTY
In the Circuit Court

Mark Gannon, Plaintiff, v. Thomas S. Doran, et al., Defendants.

MOTION

FILED
FEB 3 1951
Paul Houck,
Clerk of the Circuit Court Fayette County, Illinois.

AFFIDAVIT OF MAILING

CHARLES R. MYERS being first duly sworn says that he mailed a copy of the attached notice and motion on January 30, 1951, properly addressed with sufficient postage thereon in the Post Office at Vandalia, Illinois directed to the following persons:

(1) Robert G. Burnside (Attorney of record for Thomas S. Doran and First National Bank of Vandalia,), Vandalia, Illinois;

(2) W. R. Britton, d/b/a W. R. Britton Drilling Company, 503 S. Johnston Street, Ada, Oklahoma.

Further affiant sayeth not.

Charles R. Myers

Subscribed and sworn to before me this 30 day of January, 1951.

Marie Bennett,
Notary Public.

(SEAL)

[APPENDIX]

STATE OF ILLINOIS
SS IN THE CIRCUIT COURT
COUNTY OF FAYETTE

MARK GANNON, Plaintiff,	)	
v.	)	
THOMAS S. DORAN, W. R. BRITTON d/b/a W. R. BRITTON DRILLING COMPANY and FIRST NATIONAL BANK of VANDALIA, Defendants.	)	Complaint in Equity for Injunction, Partition, Redemption, and other relief.

NO. 47-1052

NOTICE

TO: Robert G. Burnside, Attorney of Record for Thomas S. Doran, and the First National Bank of Vandalia, and to W. R. Britton, d/b/a W. R. Britton Drilling Company:

Please take notice that the undersigned will on February 3, 1951, at ten o'clock A.M. in the Circuit Court Room in the Court House in Vandalia, Fayette County, Illinois, present a motion in the above entitled cause, copy of which motion is hereto attached, at which time you may appear if you so desire.

Charles R. Myers
Attorney for Plaintiff.

ENDORSED:

No. 47-1052

STATE OF ILLINOIS
FAYETTE COUNTY
In the Circuit Court

Mark Gannon, Plaintiff,

v.

Thomas S. Doran, et al.

Defendants.

AFFIDAVIT OF MAILING NOTICE

FILED
FEB 3 1951
Paul Houck
Clerk of the Circuit Court
Fayette County, Illinois

STATE OF ILLINOIS)
) SS. IN THE CIRCUIT COURT
COUNTY OF FAYETTE)

MARK GANNON, Plaintiff,	)
v.	)
THOMAS S. DORAN, W. R. BRITTON, d/b/a W. R. BRITTON DRILLING COMPANY, FIRST NATIONAL BANK OF VANDALIA, and GENERAL FINANCE CORPORATION, a corporation, Defendants.	) Complaint in Equity for Injunction, Partition, Redemption, and other relief.

AMENDED COMPLAINT

Plaintiff, Mark Gannon, by Charles R. Myers and F. C. Harrison, his Attorneys, complaining of the Defendants, Thomas S. Doran, W. R. Britton, d/b/a W. R. Britton Drilling Company, First National Bank of Vandalia and General Finance Corporation, a corporation, and for his amended complaint filed herein by leave of Court says:

1. That Plaintiff is now and has been for many years last past a resident of the County of Rock Island, in the State of Illinois.

2. That on or about the 10th day of September, 1946, the Defendant, W. R. Britton, was the owner of a Franks Portable, fully equipped drilling rig, Motor Number 4000-L, including 2 Diesel Motors, One Waukesha Motor, Koehler Light Plant, together with two strings of drilling tools, one-3" and one 4½"; together with one FWD Truck, bearing Factory Number 7312, Model Number 27711, Engine Number 41873, together with all equipment and accessories had and used in connection with the above drilling equipment.

3. That on or about the above date in the County of Rock Island, the Plaintiff purchased an undivided one-third (1/3) interest in and to the above described truck and drilling equipment from the said W. R. Britton, for the sum of Twenty-two Thousand Five Hundred Dollars, ($22,500.00), which said sum was then and there paid to the Defendant, W. R. Britton.

4. That the said drilling equipment was then and there being used to drill oil and gas wells in the County of Shelby and other places in the State of Illinois, and that said equipment so purchased was situated at a great distance from the home of the Plaintiff and place of purchase, and was of bulky and ponderous nature, weighing approximately 60,000 pounds.

5. That at the time of said purchase by the Plaintiff, it was agreed between the Plaintiff and Defendant, W. R. Britton, who was then and there engaged in the business of drilling wells for the recovery of oil and gas, that the said W. R. Britton would continue to use said drilling equipment for that purpose and would pay to the Plaintiff as his share of the profit derived from the use of said drilling equipment, the sum of One Thousand Dollars, ($1,000.00), for each well drilled.

6. That the Defendant from time to time thereafter drilled certain wells for the recovery of oil and gas in the

Counties of Shelby and other counties in the State of Illinois, and did then and there in the County of Rock Island, State of Illinois, in the month of December, 1946, report to the Plaintiff that he had some money for him as his share of the proceeds derived from the use of said oil well drilling equipment, and then and there promised to send the sum of Four Thousand Dollars ($4,000.00) to the Plaintiff within a few days; that at the time the Plaintiff requested the Defendant to give him some writing to evidence the ownership of said oil well drilling equipment, whereupon, Plaintiff and Defendant went to the office of a lawyer in Davenport, Iowa, on the 12th day of December, 1946, at which time and place the Defendant, W. R. Britton, made, executed and delivered to the Plaintiff a Bill of Sale as evidence of his ownership of an undivided one-third (1/3) interest in and to said oil well drilling equipment and all equipment and accessories had and used in connection therewith, which said property is more particularly described in copy of said Bill of Sale attached hereto as Exhibit "A".

7. That at the time of the purchase of said undivided interest in and to said goods and chattels, the Defendant, W. R. Britton represented the value of said property to be in excess of Sixty-five Thousand Dollars ($65,000.00) and that at said time, and also at the time of the execution and delivery of the aforementioned Bill of Sale, said Defendant warranted that he was the owner thereof and that said property was free and clear of all liens, claims or encumbrances of any kind or character.

8. That notwithstanding, the Defendant, W. R. Britton's representations that it appears from the records of the Recorder of the County of Fayette, in the State of Illinois, that the Defendant purported to mortgage certain oil well drilling equipment to General Finance Corporation, a corporation, part of which equipment may have been purchased by the Plaintiff from the Defendant, W. R.

Britton, as aforesaid; that said purported mortgage appears of record as Mortgage Instrument "K", Number 421, in the Office of said Recorder of Fayette County, Illinois, and copy of which is hereto attached, as Exhibit "B".

9. Plaintiff is informed and believes that in the month of January, 1947, the Defendant, General Finance Corporation, a corporation, attempted to foreclose the aforesaid purported mortgage; and that at said time there was in full force and effect in the State of Illinois a Statute, being Section 27, of Chapter 95, of Illinois Revised Statutes, as follows:

"Sale of property under power in Chattel mortgage—County in which sold—Notice—Statement of Sale by Mortgagee—Penalty—Recording Prior to Sale.

"That all sales of personal property under the power of sale contained in any chattel mortgage, shall be made in the county where the mortgagor resides, or where the property is situated when mortgaged. If there are more than one mortgagor, then in the County where the mortgagor in possession of the property resides at the time of taking possession by the mort*gageee,* and in every case, where the mortgagor can be found or his or her postoffice address can be ascertained, notice of the time and place of said sale shall be given to one or more of the mortgagors three days prior to said sale, and upon the making of said sale the mortgagee shall make out a statement showing the items of personal property sold, the names of each purchaser and the amount for which each article sold, and also an itemized statement of the necessary reasonable expenses incurred in taking, keeping and selling said property, and shall deliver the same to the mortgagor or some one of them in person or by mail, and if he fails so to do within ten days after said sale, the owner of said property may sue for and recover

one-third of the value of the property so sold, from the mortgagee or person making said sale as assignee of said mortgage: Provided, that nothing in this act shall apply to the sale of furniture by regular dealers on the so-called installment plan: Provided, also, that no sale made as hereinabove provided shall be valid as against the creditors of the mortgagor, unless said mortgage shall be recorded at least five days prior to the taking of possession of the goods and chattels in said mortgage described, and any such sale made within five days of the recording of said mortgage shall be fraudulent and void as against the creditors of the mortgagor. 1895, June 21, Laws 1895, p. 260, Sec. 2; 1915, June 23, Laws 1915, p. 530. Sec. 1."

and that Plaintiff is informed and believes that said foreclosure sale was irregular and did not conform to said Statute in that notice of the time and place of said sale was not given to the Plaintiff herein, nor to the Defendant, W. R. Britton d/b/a W. R. Britton Drilling Company three days prior to said sale and that the said Defendant, General Finance Corporation, a corporation, as mortgagee did not upon the making of said sale, make out a statement showing the items of personal property sold, the names of each purchaser and the amount for which each article was sold, and also an itemized statement of the necessary reasonable expenses incurred in taking, keeping and selling said property, and delivering the same to the mortgagor within ten days after said sale.

10. That Plaintiff is informed and believes that at said foreclosure sale that the Defendant, Thomas S. Doran, attempted to purchase the equipment covered by said purported mortgage for the sum of Sixteen Thousand Dollars ($16,000.00) the exact amount of which is not known to the Plaintiff.

11. That Plaintiff did not learn of the existence of said purported mortgage, nor of the attempted foreclosure sale

of the property covered thereby until approximately two weeks after the date of said attempted foreclosure sale and that immediately upon being informed thereof, he, the Plaintiff, by and through his agents and attorneys, came to the City of Vandalia, Illinois, to investigate the circumstances of said attempted foreclosure and purported purchase by the Defendant, Thomas S. Doran, and at that time and place the Plaintiff offered to redeem from said attempted foreclosure sale by payment to the said Defendant, Thomas S. Doran, the amount of money which he, the said Defendant, had paid to General Finance Corporation, a corporation, at the purported foreclosure sale; and also offered at said time and place to convey his, the Plaintiff's interest in said oil well drilling equipment to the Defendant, Thomas S. Doran for Twenty-Two Thousand Five Hundred Dollars ($22,500.00).

12. That subsequent to said offer on the part of the Plaintiff that negotiations were pending between the Plaintiff and Defendant for a period of several months, and that the Defendant through his agents and attorneys, conveyed the information to the Plaintiff on August 2, 1947, that the Defendant refused to accept the offer to redeem or to pay any moneys to the Plaintiff for his interest in said equipment and information to the effect that the Defendant intended to keep and retain all of said equipment as his own property.

13. That after notice to the Defendant, Thomas S. Doran, of the claim and interest in said oil well drilling equipment by the Plaintiff, and the repeated offer of the Plaintiff to redeem from said sale by repaying to the Defendant, Thomas S. Doran, the amount of money expended by him for the alleged purchase of said equipment, the said Defendant did, on June 11, 1947, purport to mortgage said property to the First National Bank of Vandalia, to secure the payment of Twenty Thousand Eight Hundred Dollars (20,800.00). The said First National Bank of Van-

dalia, through its agents and attorneys having actual knowledge of the claim of interest by the Plaintiff, and his offer to redeem from said sale, by reason whereof, the First National Bank of Vandalia is made a party defendant hereto.

14. Plaintiff is informed and believes that the said oil well drilling equipment herein described is of a value of at least Sixty Thousand Dollars ($60,000.00), and was of such value at the time of the attempted foreclosure sale by General Finance Corporation, a corporation, and purchased by the Defendant, Thomas S. Doran, and that Plaintiff is further informed and believes that the Defendant, Thomas S. Doran, paid to General Finance Corporation, a corporation, at said purported foreclosure sale the sum of approximately Sixteen Thousand Dollars ($16,000.00), which said sum is totally and wholly not commensurate with the true value of said property, all of which the Defendant, Thomas S. Doran, then and there well knew.

15. That notwithstanding the fact that Plaintiff has made repeated offers to redeem the oil well drilling equipment herein described from said alleged foreclosure sale by payment to the Defendant, Thomas S. Doran of the moneys expended by him to General Finance Corporation, a corporation, and the repeated refusal of the said Defendant to accept the same, that the Plaintiff nevertheless is still willing, and is able to pay and does now offer to redeem from said foreclosure sale by payment to the said Thomas S. Doran of any and all moneys paid by him to the said General Finance Corporation, a corporation, provided said oil well drilling equipment is of the same or similar value and in the same or similar condition as it was as of the date of the foreclosure.

16. That the acts of the Defendant, W. R. Britton, d/b/a W. R. Britton Drilling Company as herein alleged, constitute a fraud upon the Plaintiff.

17. That Plaintiff is informed and believes that at the time of the purported mortgage foreclosure sale to the Defendant, Thomas S. Doran, that the Defendant General Finance Corporation, a corporation, and Thomas S. Doran knew of the infirmity in the title of the Defendant W. R. Britton, and that this Plaintiff or someone had an interest in said property and that at said time the said General Finance Corporation, a corporation, would not and did not warrant title to the Defendant, Thomas S. Doran, by reason thereof.

18. That the Plaintiff is without adequate remedy in the premises except in a Court of Equity.

WHEREFORE, Plaintiff prays:

A. That an account may be taken of what is due to the Defendant, Thomas S. Doran for the amount expended by him to General Finance Corporation, a corporation, at the purported foreclosure sale, and upon payment thereof by the Plaintiff to the Defendant Thomas S. Doran, which the Plaintiff offers to pay, if the said oil well drilling equipment is of the same or similar value, or is of the same or similar condition as it was at the time of the purported foreclosure sale, that the said Defendant may be decreed to deliver over to the Plaintiff the oil well drilling equipment and truck as heretofore described and that Plaintiff may by decree of this Court be permitted to redeem said property from said alleged or purported foreclosure sale if it is in the same or similar condition or is of the same or similar value as it was at the time of said purported foreclosure sale.

B. Or, that in the alternative, a partition and division of the oil well drilling equipment and FWD Truck herein described be made to the respective parties according to their rights and interests as they may appear to this Court.

C. That an accounting be had between Plaintiff and Defendant General Finance Corporation, a corporation, as

to the value of the property sold without compliance with the provisions of the Statute hereinabove set forth and as herein alleged; and that the Plaintiff may have and recover for himself the penalty provided for in said Statute and that he may be subrogated to the rights of the Defendant W. R. Britton to recover any penalty recoverable by said Defendant W. R. Britton under and by virtue of the provisions of said Statute, for himself, the Plaintiff, by virtue of the fraud perpetrated upon the Plaintiff by the Defendant, W. R. Britton, d/b/a W. R. Britton Drilling Company.

D. That an accounting may be had between the Plaintiff and Defendant, W. R. Britton by reason of the premises herein alleged and that upon said accounting that the Plaintiff may be declared by decree of this Court to have a lien upon any interest of the Defendant, W. R. Britton, in all of said property described in the Bill of Sale and a lien on any amount recoverable by him or in his name by this Plaintiff under the statute set forth hereinabove; or that in the alternative that this Plaintiff may have judgment against the said Defendant, W. R. Britton, for any and all moneys paid to him by the Plaintiff for the purchase of an undivided interest in the personal property described in the Bill of Sale hereto attached.

E. That the Defendant, Thomas S. Doran, may be restrained and enjoined from selling, assigning or otherwise encumbering any of the oil well drilling equipment and the FWD Truck herein described, until the further order of this Court.

F. That the Plaintiff may have such other and further relief in the premises as the Court may deem meet.

Mark Gannon
by Charles R. Meyers,
Charles R. Myers
Vandalia, Illinois

F. C. Harrison
1106 Davenport Bank Bldg.
Davenport, Iowa
Plaintiff's Attorneys

STATE OF IOWA)
) SS.
COUNTY OF SCOTT)

MARK GANNON, Being first duly sworn upon oath, states that he has read the above and foregoing complaint and knows the contents thereof and that the same is true of his own knowledge, except as to the matters as are therein stated to be on his information and belief and that as to those matters, he believes it to be true.

Mark Gannon

Subscribed and sworn to before me this 23rd day of January, 1951

(SEAL)

Francis C. Harrison
Notary Public in and for Scott County, Iowa

EXHIBIT "A"

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

That for the consideration of the sum of One Hundred Dollars and other valuable consideration, to me in hand paid, the receipt whereof is hereby acknowledged, I, W. R. Britton of the County of Fayette in the State of Illinois, have this day sold, and by these presents do grant, bargain, sell and convey unto Mark Gannon of the County of Rock Island, and State of Illinois, the following described goods and chattels, now owned by me and now in the possession of W. R. Britton, and now located at St. Elmo, in the County of Fayette and State of Illinois, to-wit:

An undivided one-third (1/3) interest in and to a Franks Portable Fully Equipped Drilling Rig, being Model #4000 ACLX Serial #3128, including two (2) Cummings Diesel Motors #_____ and #_____, and also including one (1) Waukasha Motor on Mud Pump being #_____. Light plant Koler E. P. Model LAH #114762, Volt 115 D. C. Amp. 174 R. P. M. 1350, together with two strings of drilling tools, one 3" and one 4½", together with all equipment and accessories had and used in connection with the above referred to drilling equipment.

And I covenant to warrant and defend the title in and to such interest in said chattels to the said Mark Gannon against the lawful claims of all persons whomsoever.

Executed this 12th day of December, 1946.

W. R. Britton

State of Iowa)
) SS.
County of Scott)

On this 12th day of December, A. D. 1946, before me, Ethel N. Sargent a Notary Public in and for Scott County, State of Iowa, personally appeared W. R. Britton, to me personally known to be the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as voluntary act and deed.

Ethel N. Sargent
Notary Public in and for Scott
County, State of Iowa

ENDORSED:

No. 47-1052

STATE OF ILLINOIS
FAYETTE COUNTY

In the Circuit Court

Mark Gannon, Plaintiff

v.

Thomas S. Doran, et al, Defendants

Amended Complaint

FILED
FEB 3 1951
Paul Houck,
Clerk of the Circuit Court
Fayette County, Illinois.

CLERK'S CERTIFICATE OF COPY, WITH JUDGE'S VERIFICATION

STATE OF ILLINOIS,

SS.

County of Fayette

I, Paul Houck Clerk of the Circuit Court in and for said County, in the State aforesaid, do hereby certify the foregoing to be a true, prefect and complete copy of Request for Alias Summons, Alias Summons, Affidavit as to Military Service, Motion to amend Complaint Affidavit of Mailing and Notice, and Amended Complaint in Case #47-1952 Mark Gannon v. Thomas S. *Doarn*, W. R. Britton, et al.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at my office in Vandalia, Illinios this 12th day of March, A. D. 1953.

(SEAL) Paul Houck, Clerk.

STATE OF ILLINOIS,)
) SS.
County of Fayette)

I, James G. Burnside Judge of the Circuit Court, do hereby certify that Paul Houck, whose name is subscribed to the foregoing Certificate of Attestation, now is, and was

at the time of signing and sealing the same, Clerk of the Circuit Court of Fayette County aforesaid, and keeper of the Records and Seal thereof, duly elected and qualified to office; that full faith and credit are and of right ought to be given to all his official acts as such in all Courts of Record and elsewhere; and that his said attestation is in due form of law, and by the proper officer.

Given under my hand and seal this 12th day of March, A. D. 1953.

(SEAL) James G. Burnside, (SEAL)

STATE OF ILLINOIS,)
) SS.
County of Fayette)

I, Paul Houck Clerk of the Circuit Court in and for said County, in the State aforesaid, do hereby certify that James G. Burnside whose genuine signature appears to the foregoing certificate, was at the time of the signing the same, Judge of the Circuit Court, Fayette County, Illinois duly commissioned and qualified; that full faith and credit are and of right ought to be given to all his official acts as such in all Courts of Record and elsewhere.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed the seal of said Court, at my office in Vandalia, Illinois this 12th day of March, A.D. 1953.

Paul Houck, Clerk.

(SEAL)

EXHIBIT 14

IN THE DISTRICT COURT WITHIN AND FOR PONTOTOC COUNTY, OKLAHOMA

Mark Gannon, Plaintiff
v. No. 20,262
W. R. Britton, Defendant

JUDGEMENT

NOW ON THIS 4th day of May, 1953, this cause coming on for trial, the matter having been set for this date by the agreement of the parties, the plaintiff appearing by his attorney, C. L. McArthur of the firm McArthur and Orton; the defendant W. R. Britton appearing in person and by his attorneys, W. V. Stanfield and David Busby, of the firm Busby, Stanfield, Busby and Deaton, whereupon, the defendant in open court demanded a jury trial and requested that the matter be passed until a jury was present. The court finds that under the pleadings in said cause, no jury question is involved, and the motion of defendant for jury trial is overruled; whereupon, both parties announced ready for trial, and the court proceeds to trial. The plaintiff thereupon introduced in evidence, duly authenticated and certified copy of a judgment of the Circuit Court of Fayette County, Illinois in Case No. 47-1052, and duly authenticated and verified copies of other proceedings in said cause in said Circuit Court of Fayette County, Illinois, and rested. The defendant thereupon, produced witnesses, sworn and examined in open court. Court heard said testimony and documentary evidence introduced by defendant, and defendant rests. No further evidence being offered by either party, both sides having rested, court finds, and it is ordered, adjudged, and decreed, that the plaintiff herein, Mark Gannon recovered judgment against the defendant, W. R. Britton d/b/a W. R. Britton Drilling Company, on the 29th day of September, 1951 by the judgment and decree of the Circuit Court of Fayette County, Illinois in

Case No. 47-1052, for the sum of $18,000.00. The court finds, and it is ordered, adjudged, and decreed, that the said Circuit Court of Fayette County, Illinois, did then and there have jurisdiction of the subject matter and of the person of the said W. R. Britton, and that said judgment is a valid, subsisting, and binding judgment upon said defendant; that same has not been paid or satisfied, and that the plaintiff is entitled to interest on the said judgment from September 29, 1951 at the rate of 6% per annum.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, That plaintiff Mark Gannon have judgment against the defendant W. R. Britton herein, for the sum of $18,000.00 together with interest thereon at the rate of 6% per annum from the 29th day of September, 1951 until paid, and for cost of this action, for all of which let execution. To all of which judgment of the court the defendant excepts, and exceptions are by the court allowed.

(Signed) John Boyce McKeel
Judge

ENDORSEMENTS THEREON APPEARS:

Filed May 6, 1953, and entered in Book 36 at Page 513.
ABE HOLLOWAY, COURT CLERK
Pontotoc County, Okla.,
By W. D. Abbott, Deputy.
RECORDED, Journal 68, at Page 398.
Judgment Docket #5, Pg. 19.

EXHIBIT 15

[Filed in Supreme Court of Oklahoma Jan. 29, 1955, Andy Payne, Clerk.]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

NO. 36249

W. R. BRITTON, Plaintiff in Error,

v.

MARK GANNON, Defendant in Error.

MOTION FOR ORAL ARGUMENT

Comes now the plaintiff in error and respectfully moves the Court to grant leave to submit oral argument in this cause, and in support hereof represents and shows to the Court as follows:

1. The defendant in error in this cause chose the State district court as his forum.

2. All questions, legal or equitable, that could be raised are pending in this Court.

3. The plaintiff in error expects this action to be dismissed, or to be remanded with instructions for the district court to hear the evidence which the plaintiff in error submits in defense of this action.

4. After the defendant in error obtained the judgment in the State district court which plaintiff in error asserts was rendered erroneously, defendant in error then had execution issued against plaintiff in error, on which return was made on the 28th day of September, 1953, with the notation no property found. Thereafter, on October 17, 1953, defendant in error instituted proceedings against plaintiff in error for a disclosure of assets; that at the hearing thereon plaintiff in error disclosed assets consisting of $114.03 on deposit in The First National Bank in Ada, Ada, Oklahoma, which amount was by the court

ordered paid on said judgment, and the hearing on said motion was continued subject to call and is still pending in said court; that in said proceedings in the State district court the defendant in error sought the same relief as he is now asking in aid of execution in an action filed in the United States District Court in and for the Eastern District of Oklahoma, on January 20, 1955, being Cause No. 3881-Civil, styled "Mark Gannon, Plaintiff, v. W. R. Britton, Margaret Carroll Britton, and Carroll Oil, Incorporated, a corporation, Defendants," while this cause is pending on appeal to this Court.

5. Defendant in error seeks to circumvent the State courts by the filing of this Federal Court action, involving the same fact situation, the same questions of law, and the same relief which may be granted to either party by virtue of the action herein pending before the Supreme Court; that the same and all necessary parties have been joined in the State action and all are amenable to the State court process; that the filing of said action in the Federal court is unprecedented as the defendant in error has elected to go into the State court seeking the same relief as is sought in the Federal court action.

6. This cause should be advanced for speedy action and this motion for oral argument is made for the primary purpose of obtaining a quick and speedy hearing in the State court on the question involved where the plaintiff in error asserts his right to defend in an Oklahoma court against a judgment obtained by fraud in a court of a foreign state, and such question should be heard in argument by the entire personnel of this Court.

Respectfully submitted,

BUSBY, STANFIELD, BUSBY & DEATON
By David Busby
Ada, Oklahoma
Attorneys for W. R. Britton,
Plaintiff in Error.

STATE OF OKLAHOMA)
: SS. Affidavit of Service
County of Pontotoc)

W. V. STANFIELD, of lawful age, being duly sworn states that he is one of the attorneys for the Plaintiff in Error in the foregoing cause; that on the 28th day of January, 1955, he served a full, true and correct copy of the foregoing Motion on the Defendant in Error by mailing same to McArthur & Orton, Cummings Building, Ada, Oklahoma, the attorneys of record for the Defendant in Error.

W. V. Stanfield.

Subscribed and sworn to by W. V. Stanfield before me this 28th day of January, 1955.

Mary E. Waggoner
Notary Public

Seal
My commission expires
August 9, 1957

EXHIBIT 16

[Filed in Supreme Court of Oklahoma Feb. 3, 1955, Andy Payne, Clerk.]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 36249

W. R. BRITTON, Plaintiff in Error,

v.

MARK GANNON, Defendant in Error.

RESPONSE TO MOTION FOR ORAL ARGUMENT

Comes now the defendant in error and in response to the motion of plaintiff in error for oral argument, states to the court:

(1) That said defendant has no objection whatever to having this case set for oral argument, and would welcome any action of this court advancing said cause in this court.

(2) Said defendant in error admits that on January 20, 1955, he filed a suit in the United States District Court for the Eastern District of Oklahoma, being cause No. 3881-Civil, styled "Mark Gannon, plaintiff, v. W. R. Britton, Margaret Carroll Britton, and Carroll Oil, Incorporated, a corporation, defendants," and that said cause is now pending. The said defendant in error alleges the facts to be that he obtained judgment against said W. R. Britton in the District Court of Pontotoc County, Oklahoma, on the 4th day of May, 1953, for the sum of $18,000.00, together with interest thereon at the rate of six percent (6%) per annum from the 29th day of September, 1951, until paid, and costs of said action, that being the case from which appeal has been taken by plaintiff in error to this court; that after the rendition of said judgment by the District Court of Pontotoc County, Oklahoma, the defendant in error W. R. Britton caused to be organized under the laws of the State of Oklahoma, a corporation known as Carroll Oil, Incorporated, and thereafter, on June 18, 1953, assigned to the said corporation oil and gas leases of great value, for the purpose of hindering, delaying and defrauding the defendant in error herein in the collection of his debt and judgment; that the said W. R. Britton, plaintiff in error, has not superseded said judgment by any bond as required by the statutes of the State of Oklahoma; that therefore, the defendant in error, Mark Gannon, caused execution to be issued against the said W. R. Britton, and that said execution was returned no goods found, and that thereupon, the said defendant in error caused the said W. R. Britton to be summoned before the District Court of Pontotoc County, Oklahoma, to answer questions as to his assets, as authorized by the statutes of the State of Oklahoma, and that the said W. R. Britton, in answer to questions before said court,

denied that he had any assets subject to execution except the sum of $114.03, deposited in the First National Bank in Ada, Ada, Oklahoma, which sum, under the direction of the court, was paid to the said defendant in error, Mark Gannon, to be applied upon his judgment, and that no other payments have been made on said judgment; that in said proceedings before the District Court of Pontotoc County, Oklahoma, in an attempt to discover assets of the said W. R. Britton, the plaintiff in error W. R. Britton sought to evade many questions, and objected to producing records and documents which would throw light on his assets, and on the transfer of certain assets by him to Margaret Carroll Britton and to Carroll Oil, Incorporated, for the reason that said Margaret Carroll Britton and Carroll Oil, Incorporated, were not parties to said proceeding, and that their records disclosing transactions between the said W. R. Britton and said parties could for that reason, not be ordered brought before said court.

(3) Defendant in error denies that he seeks to circumvent the State court of the State of Oklahoma by the suit filed in the Federal court, and denies that said proceeding in the Federal court involves the same fact situation and the same questions of law, or that said action seeks the same relief which may be granted to the parties in the action herein pending before the Supreme Court. Said defendant in error further denies that all the necessary parties have been joined in the State action, as in the Federal action, or that all of the parties named in the Federal action are amenable to this court in this case. Defendant in error states that the said action in the Federal court is in the nature of a creditor's bill, to set aside fraudulent conveyances by the said plaintiff in error W. R. Britton, to other parties named in said Federal action, and to subject to the payment of the judgment of the said defendant in error Mark Gannon, against the said plaintiff in error W. R. Britton, property fraudulently conveyed by the said

W. R. Britton, to hinder, delay and defraud the said Mark Gannon.

WHEREFORE, the said Mark Gannon, defendant in error, prays that this cause proceed in this court as rapidly as is possible with convenience to this court.

McARTHUR & ORTON, Attorneys
for Defendant in Error
By C. L. McArthur.

STATE OF OKLAHOMA)
: SS. Affidavit of Service
COUNTY OF PONTOTOC)

C. L. McArthur, of lawful age, being duly sworn, upon oath states: That he is one of the attorneys for defendant in error in the above cause; that on the 2nd day of February, 1955, he served a full, true and correct copy of the foregoing Response to Motion for Oral Argument, on the plaintiff in error, by mailing a copy thereof to Busby, Stanfield, Busby & Deaton, American Building, Ada, Oklahoma, the attorneys of record for the plaintiff in error.

C. L. McArthur

Subscribed and sworn to before me this 2nd day of February, 1955.

SEAL Johnie Reed, Notary Public
My commission expires
January 3, 1957.

EXHIBIT 17

[Filed in Supreme Court of Oklahoma, June 2, 1955, Andy Payne, Clerk.]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

W. R. BRITTON, Plaintiff in Error,)
v.) No. 36,249.
MARK GANNON, Defendant in Error.)

PETITION FOR REHEARING

Comes now Mark Gannon, defendant in error, and respectfully represents to the court, that on the 3rd day of May, 1955, a decree and judgment was rendered by this Court in this cause, reversing and remanding for a new trial the judgment of the District Court of Pontotoc County, Oklahoma, whereby this petitioner Mark Gannon obtained a judgment against the plaintiff in error W. R. Britton, in a suit on a foreign judgment rendered in favor of the said Mark Gannon against the said W. R. Britton by the Circuit Court in and for Fayette County, Illinois. Said defendant in error would show to the court:

(1) The opinion and judgment of the court is erroneous in that it adopted or accepted the theory of the plaintiff in error that allegations to the effect that Mark Gannon was not the real party in interest in the suit in Illinois, or in the Oklahoma court, are a legitimate or a valid defense as against a foreign judgment. By this error, the court failed and refused to give full faith and credit to the Illinois judgment, as required by Article IV, Section 1 of the Constitution of the United States. Inasmuch as the Circuit Court in and for Fayette County, Illinois accepted and regarded Mark Gannon as the real party in interest, and, in fact, the only party in interest as a plaintiff, the courts of Oklahoma must give full faith and credit to that

conclusion of the Illinois Court, and are not now permitted to go into or question that fact.

(2) The court erred in adopting or accepting the view that allegations in regard to the acts, conduct, and statements of Roy "Spike" Gannon, and an offer to prove such acts and statements by him, imputed fraud on the part of the plaintiff Mark Gannon. There is nothing in the record to indicate that any of the alleged fraud referred to in Britton's pleadings or tendered proof, was perpetrated or instigated by the plaintiff Mark Gannon, or that he even had any knowledge of it, if in fact such allegations contained any vestige of truth.

(3) That said decision is wholly in conflict with the controlling decisions of the United States Supreme Court to the effect that fraud could not be pleaded in an action in one state upon the judgment of another.

(4) That said decision is wholly in conflict with the controlling decisions of the Supreme Court of the State of Illinois, to the effect that the judgment of a court having jurisdiction of the subject matter and of the parties cannot be collaterally attacked in another court for fraud in its procurement unless that fraud is such as "prevents the court from acquiring jurisdiction or merely gives it colorable jurisdiction."

WHEREFORE, defendant in error tenders the annexed brief in support of this petition, and prays that a rehearing of said cause may be granted by the Honorable Court, and that full faith and credit be given to the judgment of the Circuit Court of Fayette County, Illinois, and that recognition be given to the controlling decisions of the United States Supreme Court, and of the Supreme

Court of the State of Illinois, which decisions should be binding and controlling on this court.

C. L. McArthur
Hobert G. Orton
218 Cummings Building
Ada, Oklahoma
Attorneys for Defendant in Error,
Mark Gannon.

EXHIBIT 18

[Filed in Supreme Court of Oklahoma June 28, 1955, Andy Payne, Clerk.]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

W. R. BRITTON, Plaintiff in Error,)
v.) No. 36,249.
MARK GANNON, Defendant in Error.)

RESPONSE OF PLAINTIFF IN ERROR TO MOTION TO STAY ISSUANCE OF MANDATE AND EXECUTION THEREOF

Plaintiff in error for response to motion of defendant in error for stay of issuance of mandate and execution thereof, now shows to the Court that the said motion should be denied and overruled and mandate issued for the following reasons, towit:

(1) The issuance of a mandate is now in order according to the rules and procedure of this Court.

(2) The issuance of mandate is entirely within the jurisdiction of this Court.

(3) The Supreme Court of the United States is wholly without jurisdiction to review the decision of this Court

in this cause and lack of jurisdiction appears upon the face of the motion of defendant in error.

(4) There is no requirement of law that this Court stay its mandate pending action by defendant in error to seek review by the Supreme Court of the United States.

(5) Refusal to stay the mandate will not prejudice defendant in error.

(6) Stay of the mandate will disrupt the orderly processes of this Court and operate to the prejudice of Plaintiff in error.

(7) The judgment rendered by the District Court of Pontotoc County, Oklahoma and reversed by the decision of this court, has, by defendant in error, been made the basis of an ancillary action in the United States District Court of the Eastern District of Oklahoma to the henderance and injury of the plaintiff in error and other parties.

(8) The Supreme Court of the United States is now on extended vacation and the gratuitous action of this Court in staying mandate upon motion of defendant in error, would result in hardship and injury to the plaintiff in error.

Brief in support of this motion is hereto attached and made a part hereof.

Wherefore, plaintiff in error urges that the motion of the defendant in error be denied and that mandate and execution thereof issue.

BUSBY, STANFIELD, CRAWFORD, BUSBY & DEATON
Attorneys for Plaintiff in Error
By J. W. Crawford

Service of the above Response and receipt of a copy thereof, together with the brief thereto attached, is ac-

knowledged, and service accepted, this 27th day of June, 1955.

McARTHUR & ORTON, Attorneys for Defendant in Error Mark Gannon
By C. L. McArthur

EXHIBIT 19

[Filed in Supreme Court of Oklahoma June 30, 1955, Andy Payne, Clerk.]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

W. R. BRITTON, Plaintiff in Error,)
v.) No. 36,249.
MARK GANNON, Defendant in Error.)

REPLY OF DEFENDANT IN ERROR TO RESPONSE OF PLAINTIFF IN ERROR TO MOTION TO STAY ISSUANCE OF MANDATE AND EXECUTION THEREOF

Comes now the defendant in error, Mark Gannon, and asks leave of court to file this reply to the response of plaintiff in error, to motion to stay issuance of mandate and execution thereof.

REPLY

The defendant in error filed herein, on the 24th day of June, 1955, his motion to stay issuance of mandate and execution thereof, under the impression that such stays were granted by this and other courts, under similar circumstances, almost as a matter of course, and that the grant of such stay was not in any way mandatory on the court, but that such stays were ordinarily granted under such circumstances, but inasmuch as the plaintiff in error has filed objection to such stay, we feel that it is at least a

courtesy to this court to file a reply herein, to the matters set out in the response of plaintiff in error.

We agree with the plaintiff in error that the issuance of the mandate in this case is within the jurisdiction of this court, and that there is no mandatory requirement of law that this court should stay its mandate.

This is certainly not an appropriate time nor place to argue the question as to whether the United States Supreme Court has or has not jurisdiction to review the decision of this court in this case. It has been held many times that the Supreme Court of the United States is itself the final arbiter as to its jurisdiction to grant certiorari in order to enforce the full faith and credit clause of the Constitution of the United States. *Williams* v. *North Carolina* (1942), 217 U.S. 287, 87 L.Ed. 279, 63 S.Ct. 207. *Johnson* v. *Muelberger* (1951), 340 U.S. 581, 95 L.Ed. 552, 71 S.Ct. 474. It is quite true that the general rule is that the Supreme Court of the United States will not review decisions of the highest court of a State, unless such decisions and judgments are final, but as stated by that court in the case of *Pope* v. *Atlantic Coast Line Railroad Company*, 245 U.S. 379, 97 L.Ed. 1094, 73 S.Ct. 749, "Yet we are not bound to determine the presence or absence of finality from a mere examination of the 'face of the judgment.' We have not interpreted § 1257 so as to preclude review of federal questions which are in fact ripe for adjudication when tested against the policy of § 1257."

The decision of this court refusing to grant full faith and credit to the Illinois judgment sued on, is final, and certainly makes the question "ripe for adjudication" by the Supreme Court of the United States. Under such circumstances, the Supreme Court of the United States has granted writs of certiorari to review such cases. *Johnson* v. *Muelberger* (1951), 340 U.S. 581, 95 L.Ed. 552, 71 S.Ct. 474.

We cannot agree with plaintiff in error that the refusal to stay the mandate will not prejudice the defendant in error. It is, of course, intended by the plaintiff in error that it should injure and prejudice the defendant in error. Plaintiff in error again makes reference to the ancillary action brought by Gannon against Britton and others in the United States District Court for the Eastern District of Oklahoma, which suit was heretofore referred to by plaintiff in error in his motion for oral argument in this case, therein stating that the suit in the federal court was brought against W. R. Britton, Margaret Carroll Britton, and Carroll Oils, Inc., and the purpose and necessity of such suit was explained by the defendant in error in his response to that motion for oral argument, wherein it was shown that the said W. R. Britton, after judgment was obtained in the District Court of Pontotoc County, Oklahoma, in this case, organized an Oklahoma corporation known as Carroll Oil, Inc., and transferred valuable producing oil leases to the said corporation, in order to hinder, delay and defraud the said Mark Gannon in the collection of his judgment; that it was necessary for the defendant in error, Mark Gannon, to take timely action in regard to said fraudulent transfer, to avoid the running of the statute of limitations against this defendant in error, and the said plaintiff in error now seeks to avoid the stay of the mandate in this case so that he can take the position in the Federal court action that no judgment has been obtained against the plaintiff in error in the State of Oklahoma, so that there will be no basis for the suit in the Federal District Court in the nature of a creditor's bill, and he seeks to have this action taken, before the validity and effectiveness of that judgment can be properly tested by the Supreme Court of the United States, the only court that can finally determine whether or not the Illinois judgment in question is entitled to full faith and credit in the courts of the State of Oklahoma.

The stay of the mandate at this time will not disrupt the orderly process of this court, nor will it prejudice the plaintiff in error further than to afford to defendant in error a full and complete and final determination of the Federal question involved in this case, and finally determine for both plaintiff in error and defendant in error, whether or not the Illinois judgment involved, is entitled to full faith and credit in the courts of the State of Oklahoma.

WHEREFORE, the defendant in error respectfully prays that the mandate and execution thereof be stayed until the Federal question involved can be finally determined in an orderly manner by the Supreme Court of the United States.

McARTHUR & ORTON, Attorneys for
Defendant in Error,
By C. L. McArthur

CERTIFICATE OF SERVICE

C. L. McArthur, one of the attorneys for the defendant in error above named, states that he served the above and foregoing reply upon the plaintiff in error, W. R. Britton, by mailing a copy thereof to Busby, Stanfield, Crawford, Busby & Deaton, Attorneys for said plaintiff in error, this 29th day of June, 1955, at their office in the American Building, Ada, Oklahoma.

C. L. McArthur

EXHIBIT 20

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

Mark Gannon,	Plaintiff,)	
v.	)	Civil Action
W. R. Britton, Margaret Carroll	)	No. 3881.
Britton, and Carroll Oil, Incor-	)	
porated, a corporation,	Defendants,)	

ORDER

Now on this 1st day of July, 1955, this matter coming on to be heard upon the motions of the defendants W. R. Britton and Margaret Carroll Britton for summary judgment, and on the motion of the plaintiff Mark Gannon to dismiss the counter-claim filed by the defendant Carroll Oil, Incorporated, and for other relief; the plaintiff appearing by his attorney C. L. McArthur of the firm of McArthur & Orton; and the defendants and each of them appearing by their attorney J. W. Crawford of the firm of Busby, Stanfield, Crawford, Busby & Deaton; and the court having heard the argument of counsel, and being fully advised as to the condition of the record in the case of W. R. Britton, plaintiff in error, v. Mark Gannon, defendant in error, pending in the Supreme Court of the State of Oklahoma, and it appearing that the reversal of the judgment of the District Court of Pontotoc County, Oklahoma, on which the cause of action before this court depends, is subject to review by the Supreme Court of the United States, there being involved the question of granting full faith and credit to the Illinois judgment on which suit was brought in the District Court of Pontotoc County, Oklahoma, an appeal from which is now pending in the Supreme Court of the State of Oklahoma, and the court finds that all action on the motions for summary judgment should be stayed pending the final adjudication as to the judgment rendered by the District Court of Pontotoc County, Oklahoma, and

which was appealed to the Supreme Court of the State of Oklahoma; and the court further finds that inasmuch as action on said motions for summary judgment should be stayed, that all other proceedings in this cause should also be stayed until the final and complete determination as to the validity of the judgment of the District Court of Pontotoc County, Oklahoma.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that all further action in this cause be stayed until the final adjudication as to the validity of the said judgment in the District Court of Pontotoc County, Oklahoma, in the case of Mark Gannon v. W. R. Britton.

Eugene Rice, Judge.

FILED
OCT 17 19
HAROLD B. WILLEY

IN THE

Supreme Court of the United States

October Term, 1955

No. 387

MARK GANNON, *Petitioner*

v.

W. R. BRITTON, *Respondent*

REPLY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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To the Honorable Supreme Court of the United States:

1. Your respondent, W. R. Britton, in this opposition to the granting the writ of certiorari prayed for, will not attempt herein to reply at this time to the extensive brief on the merits filed by petitioner. Should the petition be granted, respondent will file proper brief seriously opposing the contentions of petitioner in his presentation of the merits of his case on appeal. But to state briefly regarding the merits of petitioner's case, as shown in his brief, that this is not the type of case usually considered by the Supreme Court; there is no question of public interest involved, and petitioner has full access to the highest court in his State.

2. STATEMENT OF THE CASE

The facts here stated relate to the one point, that the judgment petitioner seeks to have the Supreme Court review is not a "Final Judgment or Decree" (U.S.Code, Title 28, Sec. 1257), and to Rules 19 and 20 of the Rules of the Supreme Court of the United States.

On the 21st day of February, 1952, Mark Gannon as plaintiff filed a petition in the District Court of Pontotoc County, Oklahoma, against W. R. Britton, defendant in Action No. 20,262. Pleadings and amendments to pleadings were filed by both parties, records, evidence, and proffered evidence were heard by the trial court without a jury, and on the 4th day of May, 1953, the trial judge, John Boyce McKeel, entered a finding and judgment for plaintiff. (Petitioner's Appendix page xi, and page lxxviii).

From this judgment defendant, W. R. Britton, appealed to the Supreme Court of Oklahoma. Extensive arguments and briefs setting forth the legal contentions of the parties were had (see petitioner's appendix) and after consideration the Supreme Court of Oklahoma, said:

"The trial court erred in refusing the proffered evidence of extrinsic fraud. Reversed and remanded for a new trial." (Petitioner's appendix, pages 1 to vi).

By this order of the Oklahoma Supreme Court the case was sent back to Pontotoc County District Court, for a new trial. The testimony proffered by defendant, W. R. Britton, was made competent on a retrial of the case de novo.

3. ARGUMENT AND CITATION OF AUTHORITIES:

"The court remanded the cause for trial, not for dismissal. The judgment therefore was not final; it was interlocutory and not reviewable here within the meaning of our jurisdictional statute. 28 U.S.C.A., sec. 1257 (3)" (citing cases under note 10). "As its judgment upon the first writ was merely for a reversal of the court below, and for a trial, such judgment, not being final, could not be made the subject of a writ from this court." United States v. Denver & R.G.R. Co., 191 U.S. 83, 93, 24 S.Ct. 33, 36, 48 L.Ed. 106. See Coe v. Armour Fertilizer Works, 237 U.S. 413-418-449, 35 S.Ct. 625-627, 59 L.Ed. 1027, Gospel Army v. City of Los Angeles, 331 U.S. 543, 67 S.Ct. 1428, 91 L.Ed. 1662, and authorities cited."

The above is quoted from Urie v. Thompson, 337 U.S. 163, 171, 69 S.Ct. 1018, 1025, 11 A.L.R. 2d 252.

It appears that the authorities are uniform in holding that where the Supreme Court of a State reverses a case and remands it to the trial court for a new trial that the action of the State supreme court is not a *final judgment* entitling the losing party to petition for a writ of certiorari by the Supreme Court.

In 97 L. Ed. in a note at page 212, it is said:

"As stated in the earlier annotation, a judgment or decree of the highest court of a state, reversing an inferior court and remanding the cause to the lower court for a new trial is not a final judgment, and hence not reviewable by the federal Supreme Court. This rule is also supported by Urie v. Thompson (1949) 337 U.S. 163." Supplemental annotation on the same point is found in 97 L.Ed. at 1186. Volume 16 of Words and Phrases, pages 749 to 754 under "Reversed or Remanded" cites many cases in point. On page 753: "A judgment of an appellate court reversing the judgment of the trial court and remanding the cause for further proceedings is not a final judgment, as that term is used in federal appellate proce-

dure." (citing many federal cases). "a judgment reversing that of an inferior court and awarding a new trial is not a final judgment. Houston v. Moore, 16 U.S. (3 Wheat. 433, 4 L.Ed. 428. No judgment is final which does not terminate the litigation between the parties. A judgment reversing the judgment of an inferior court, and remanding the cause, is not a final judgment. St. Claire County v. Lovingston, 85 U.S. (18 Wall.) 628, 21 L.Ed. 813, Winn's heirs v. Jackson 25 U.S. (12 Wheat) 135, 6 L. Ed. 577." See also Great Western Tel. Co. v. Burnham, 162 U.S. 339, 16 S. Ct. 850, 851.

CONCLUSION

So far as we have been able to find a State supreme Court's judgment reversing a case and remanding it to the trial court for a new trial is not a final judgment in contemplation of United States Code, Title 28, sec. 1257. Since a writ of certiorari may be granted to review a final judgment only the petitioner in this case has no foundation on which to ask the Supreme Court to grant him the writ prayed for, and therefore he must fail. The respondent respectfully submits that the petition should be denied.

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